

**A Blueprint for the Evaluation of an Ombudsman's Office:
A Case Study of the ICANN Office of the Ombudsman**

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Summary

The title of this dissertation incorporates two key terms that define the work. First, the reader should view the paper by as a blueprint for evaluation which, like all generic blueprints, can be amended to fit the terrain, augmented based on new information or technology, or reduced to fit a stricter budget. It is also very much a blueprint that is developed from an action-oriented case study of an ombudsman, and is, therefore, relevant and tested.

A long-standing question in the ombudsman community has been how to evaluate ombudsman operations without impugning the determining characteristics of an ombudsman: independence, impartiality, and confidentiality.

There has been a lack of information or guidance, especially at the practitioner level, on how ombudsmen can develop meaningful evaluations without violating confidences or independence. This dissertation provides practitioners with tools that will enable them to conduct evaluations to determine information about ombudsman operations, formulation, and improvements.

The dissertation also provides information on two areas of interest for ombudsmen. First, it focuses on the design, development, reporting on, and assessment of a multipronged evaluation approach for the Internet Corporation for Assigned Names and Numbers (ICANN) Office of the Ombudsman. This review also considers the somewhat scarce existing literature in the field.

Second, this dissertation fills the gap in the existing literature by developing a practitioner's guide to evaluation techniques. The evaluation research is developed and conducted with the ICANN Ombudsman by designing, implementing, and assessing a number of evaluation techniques: self-evaluation, client surveys, benchmarking activities, and the like.

The ICANN Office of the Ombudsman is a unique entity. It conducts online dispute resolution as an ombudsman. It is likely the first, if not the only online ombudsman operation anywhere. The ICANN Ombudsman has jurisdiction over complaints concerning the actions, decisions, or inactions of the ICANN Board of Directors, staff, or supporting organizations. It conducts its work using a wide variety of alternative dispute resolution techniques: negotiation, mediation, shuttle diplomacy, good offices, fact finding, investigation, and reporting and recommendation.

All this research is important, not simply to fill gaps in the literature, but to provide the growing ombudsman community with cost-effective tools that enable them to determine any gaps in community service, jurisdiction, or activity; to determine whether there are adequate resources; and to justify retention of either the incumbent or the programme generally. This is a set of skills and action plans that are in high demand by the community, and this dissertation provides the first major steps to meet that demand.

Statement of Authorship

“Except where reference is made in the text of the thesis, this thesis contains no material published elsewhere or extracted in whole or in part from a thesis or any degree or diploma.

“No other person’s work has been used without due acknowledgement in the main text of the thesis.

“This thesis has not been submitted for the award of any degree or diploma in any other tertiary institution.”

Frank Fowlie

Date

Acronyms and Abbreviations

ABA	American Bar Association
ADR	Alternative Dispute Resolution
ALAC	At Large Advisory Committee
ASA	American Standards Association
BIOA	British and Irish Ombudsman's Association
ccTLD	Country Code Top-level Domain
ECR	Environmental Conflict Resolution
ERC	Evolution and Reform Committee
EU	European Union
FCO	Forum of Canadian Ombudsman
FTE	Full Time Equivalent
GAC	Governmental Advisory Committee
GNSO	Generic Names Supporting Organisation
gTLD	Generic Top-level Domain
IANA	Internet Assigned Numbers Authority
ICANN	Internet Corporation for Assigned Names and Numbers
ICHRP	International Council on Human Rights Policy
IOA	International Ombudsman Association
IOI	International Ombudsman Institute
IP	Internet Protocol
IRP	Independent Review Panel or Process
ISO	International Organisation for Standardization
NATO	North Atlantic Treaty Organisation
OBSI	Ombudsman for Banking Services and Investments
OHRCC	Office of Human Relations and Citizen Complaints
OSCE	Organisation for Security and Cooperation in Europe
RMAF	Results-based Management Accountability Framework
TBS	Treasury Board Secretariat
TOR	Terms of Reference
UDRP	Uniform Domain Name Dispute Resolution Policy
UN	United Nations
UNODR	United Nations Expert Working Group on Online Dispute Resolution
USOA	United States Ombudsman Association

Chapter One

Introduction and Methodology

1.1 Introduction

Methods for measuring the effectiveness of the Ombudsman office ... do not exist.¹

The underlying impediment to sound assessment has been the lack of reliable and valid information that could be fit into any defensible summative evaluation format.²

This dissertation first examines the use of, then designs and develops evaluation strategies for the field of ombudsmanship. The examination is conducted from the perspective of evaluation techniques developed for the Internet Corporation for Assigned Names and Numbers (ICANN) Office of the Ombudsman, and suggests evaluation methodologies that can apply to all ombudsman offices. The evaluation strategies suggested here are equally relevant to sole practitioner operations and to large ombudsman institutions.

This dissertation also suggests that it is possible to use a multifaceted evaluation approach to develop an understanding of how effectively an ombudsman office is in conducting its functions.

Little work has been done to date to evaluate ombudsman operations, with the possible exception of financial audits. The reluctance to evaluate ombudsman operations may arise out of the particular nature of ombudsmanship. Ordinarily, ombudsman processes are considered confidential, independent, and impartial. Ombudsman practitioners may shy

¹ Williams, Randy et al., 2003, **Organisational Ombudsman Program: A Governance and Trust Strategy**, The Human Resource Planning Society p8

² Institute of Medicine (IOM), Harris-Wehling, J., Feasley, J. C., & Estes, C. L. (1995). **Real People, Real Problems: An evaluation of the long-term care ombudsman programs of the Older Americans Act.** <http://www.nap.edu/readingroom/books/rprp/summary.html> (accessed December 5, 2006) p8 para 2

away from evaluation of their operations to avoid the risk of breach of confidentiality. Other barriers to evaluation may relate to economic and human resource costs as well as the overall lack of experience and literature in the field that can be used to model evaluative tools.

However, this dissertation demonstrates that it is possible to understand the effectiveness of an ombudsman programme without threatening the confidential and independent nature of the work. It also develops cost and human resource effective techniques to conduct evaluation.

It is possible that there are opportunities to evaluate the ombudsman offices without breaching either the independent or confidential nature of the work. This dissertation documents research in developing a blueprint for evaluation, using the ICANN Office of the Ombudsman as the test case. The intention is to develop a model that ombudsmen can use, adapt, or expand upon to meet the size, complexity, and economic restraints of their operations.

From feedback, interviews, and discussions with ombudsman colleagues, it is reasonable for the researcher to hypothesize that the desire to evaluate and demonstrate value is high, while the resources necessary to conduct these evaluations are low. This dissertation, therefore, has a direct practical and applied benefit to the ombudsman community.

1.2 Dissertation Objectives

The author of this dissertation is an ombudsman. As the author began to research ways of demonstrating the value of his office to the organisation he works in, little guidance could be found either in the literature or from ombudsman colleagues. As a practitioner, the author believed that he could

develop an evaluation strategy for his own office and that once it was developed, the strategy could be used, in part or in whole, by any ombudsman service.

The purpose of the dissertation's research is to design and develop a set of generic tools which ombudsmen could use to investigate the effectiveness of their own operations. These tools are developed through an international literature review and the modeling and testing of an evaluation process in the ICANN Office of the Ombudsman. The tools developed herein do not constitute a solitary - imposed approach, where all ombudsman schemes submit to each and all of the evaluations techniques. Rather, practitioner may use or reject the tools as is appropriate for the operation, capacity, and budget of the ombudsman's operation.

These evaluation tools provide ombudsman practitioners the ability to evaluate issues such as the basis for applying fairness concepts in their operations; determining levels and perceptions of independence, neutrality, and confidentiality; gauging the effectiveness of operations or investigation outcomes; accessibility; and the efficient handling of cases and case volumes. These evaluation tools are defined and their applications evaluated throughout this dissertation.

1.3 What is an Ombudsman?

An ombudsman is an independent, objective investigator of people's complaints against government agencies and other organisations, both public and private sectors.

After a fair, thorough review, the ombudsman decides if the complaint is justified and makes recommendations to the organisation in order to resolve the problem.³

Ombudsmanship came into being in 1809, when the Swedish Parliament appointed the first ombudsman to protect citizens from the excesses of bureaucracy.⁴ The word ombudsman consists of two parts: *ombuds*, meaning representative; and *man*, a gender-non-specific term meaning the people. Historically, an ombudsman has been the representative of the people in dealings with bureaucracy. In Quebec the ombudsman is referred to as “The Protector of the Citizens”; while in France the ombudsman is called “The State Mediator”.⁵

Ombudsmen are generally concerned with the fair treatment of members of their constituency by the bureaucracy or agency they oversee. Ombudsmen are generally characterized as being independent, impartial, and neutral advocates neither for the agency nor the complainant, but rather for the principles of administrative fairness. It is worthwhile to consider the distinction between substantive fairness, which can be defined as a fair outcome of an administrative process, and procedural or administrative fairness, which is defined in the following paragraphs.

Ombudsmen are generally concerned with administrative fairness, as opposed to results in regulatory or criminal processes. Ombudsmen deal with the redress of unfair situations rather than the administration of compliance frameworks. The Code of Administrative Justice by the British Columbia

³ Forum of Canadian Ombudsman, 2006, **What is an Ombudsman?**
http://www.ombudsmanforum.ca/whatis_e.asp (accessed January 28, 2007)

⁴ United States Ombudsman Association, 2006, **History of the Public Sector Ombudsman**,
http://usoa.non-profitsites.biz/en/About_Us/history.cfm (accessed October 15, 2006)

⁵ Protecteur de la Citoyenne; Mediateur de L'Etat

Ombudsman lists at least 16 criteria for administrative fairness. These include issues such as unreasonable delay and unfair procedures.⁶

This dissertation relies primarily on that Code of Administrative Justice to provide a working definition of administrative fairness that can be applied consistently and universally for ombudsman purposes. Fairness can have different meanings across context, culture, language, and tradition. The Code of Administrative Fairness provides an excellent example of describing “being fair” in neutral and explicit terms.

Administrative fairness has been defined in the following manner:

“... our judges have had an historic association with the concept which we call “due process of law”. The phrase, which has its roots in the Magna Carta, sums up our attachment to civility no less than to legality. In popular terms, it means fair play: assuring a hearing on the pros and cons of an issue to those affected; apprising them of what they have to meet or, in a criminal case, of the charges against them; giving them an opportunity to produce witnesses and to counter evidence adduced against them; allowing them to present argument on the facts and legal issues raised in the litigation; and assuring them finally of a considered decision by an impartial judge. What is important about due process is the fact that its rationale has taken hold beyond the courtroom and has been applied in administrative proceedings and to public affairs generally. It has, in short, become a social norm, implying both a right of individuals and groups in our society, who have grievances to air, or demands to press, or claims to litigate, to make themselves heard; and correlatively, an obligation to advance their causes through rational procedures which, after painful experience,

⁶ British Columbia Ombudsman, 2003, **Special Report 42, Code of Administrative Justice**, http://www.ombud.gov.bc.ca/reports/Public_Reports/Public%20Report%2042.pdf (accessed October 30, 2006)

have displaced naked force as the means through which the case is made for change and the redress of wrongs.⁷

Ombudsmen can be important actors in the overall operation of the civil justice system. They provide alternative dispute resolution⁸ services, which may reduce the propensity for costly and time-consuming grievances and litigation. Their existence and presence ensures that administrative fairness is supported in a wide variety of civil and business institutions.

1.3.1 Types of Ombudsmen

Ombudsmen are generally classed in one of three categories: *classical or legislative, organisational, and executive*.⁹

Classical or legislative ombudsmen are appointed by a national, state or provincial, or municipal legislative body to ensure the fair treatment of the population by the administration. There are numerous examples of classical ombudsmen across the globe. These would include the many municipal, state, provincial, or national ombudsmen appointed by the appropriate level of government. They are located outside of the structure of the agency they oversee, and receive complaints from the external users of services provided by the agency. Classical ombudsmen receive wide-ranging powers to investigate complaints, to make reports, and to make recommendations to the authority to resolve matters.

⁷ Justice Bora Laskin, SCC, quoted at Zacks, Micheal, 1999, **Administrative Fairness in the Investigative Process**, in Reif, Linda, Editor, **The International Ombudsman Anthology**, Kluwer Law International, The Hague, pp 555-556

⁸ "ADR is any method of dispute resolution other than formal adjudication such as court litigation or administrative proceedings. ADR is not a fancy, new approach but rather an alternative – characterized by common sense and flexibility." Costantino, Cathy, et al., 1996, **Designing Conflict Management Systems**, Jossey Bass, San Francisco p33

⁹ There is a category for Advocate Ombudsman, but the research failed to identify any such programs in existence.

Organisational ombudsmen are appointed by their respective agencies to receive complaints about fairness issues within the organisation. These internal ombudsmen service a community within an organisation, such as staff, patients, or students. Organisational ombudsmen are an informal resource and do not conduct investigations, nor do they make reports or recommendations.

Executive ombudsmen are appointed by their agency as an internal dispute resolution resource for complaints generated by an external community. Examples of executive ombudsmen would be bank or insurance ombudsmen, newspaper ombudsmen, and, in the case of ICANN, an Internet Ombudsman.

While executive ombudsman are located within specific agencies, as are organisational ombudsmen, they deal with an external public and conduct investigations, and may make reports and recommendations, as do classical ombudsmen.

The American Bar Association (ABA) Standards define an executive ombudsman as:

An executive ombudsman may be located in either the public or private sector and receives complaints from the general public or internally and addresses actions and failures to act of the entity, its officials, employees, and contractors.¹⁰

1.4 Why Evaluate?

Evaluation is relevant to ombudsmen for the following reasons:

¹⁰ American Bar Association, 2004, **Standards for the Establishment and Operation of Ombuds Offices**, <http://www.abanet.org/adminlaw/ombuds/115.pdf> (accessed October 30, 2006)

- *Demonstrating Value:* The evaluation process helps to demonstrate that the ombudsman's office provides value to the government, organisation or entity; not only with economic savings, but also by improving systems and enhancing the organisation's reputational value.
- *Is it working?:* By developing and using an evaluation strategy the ombudsman's office can demonstrate that it is competently delivering its program and discharging its mandate.
- *What can be improved?:* By using a methodical evaluation process, the ombudsman may learn if there are issues, processes, connections, values, or orientations which could or should be improved.
- *What are the existing strengths?* Through the evaluation process practitioners are enabled to underline those successes which both the ombudsman and the organisation, as a whole, can draw upon.
- *Ensuring service standards:* The evaluation process allows practitioners to see whether the ombudsman is operating a professional program which meets professional standards.
- *Demonstrate integrity:* A methodical evaluation process which is both open and transparent, including an out-reporting strategy demonstrates the integrity of both the office and the assessment process.¹¹

¹¹ List from ICANN Office of the Ombudsman, 2006, **Evaluation Process Development – Report to Audit Committee**, Power Point Presentation (see Appendix 1)

In general terms, ombudsmen occupy a unique position in governments, corporations, and institutions. They are independent and their work is generally conducted on a confidential basis. This distinction means that accountability, oversight, and content review are difficult to externalize. Often ombudsman evaluations have been limited to financial audits, simple cost-per-file-caseload metrics, and the filing of the ombudsman's annual reports.¹² Demonstrating value has also traditionally been shown through the publication of public reports on complaints to the ombudsman. These few mechanisms enable the greater community to evaluate some indicators and issues, but not the depth of the whole ombudsman operation.

1.5 Methodology

Section 1.2 identifies the purpose of the dissertation's research; the design and development of a set of generic tools which ombudsmen could use to investigate the effectiveness of their own operations. The dissertation research methodology significantly augments the current state of knowledge and application in the field of evaluation principles for Ombudsman operations.

The dissertation uses the ICANN Office of the Ombudsman as a test case, from which a blueprint can be designed with application for other Ombudsman programs. This dissertation documents, on a step-by-step basis, the evaluation processes undertaken with the ICANN Office of the Ombudsman during the operation's startup, and the formative evaluation. The dissertation also develops, designs, and plans for summative evaluation processes that

¹² ICANN Office of the Ombudsman, 2005, **2005 Annual Report**, and ICANN Office of the Ombudsman, 2006, **2006 Annual Report**

occur in the future, and which have not yet been implemented by the test case.

Drawing together the evaluation processes and experiences of the test case, the dissertation is able to develop a standalone evaluation guide, which has already been reported in the literature.¹³ This guide is found at Appendix 11. This guide is the leading document with the present state of practice concerning Ombudsman evaluation.

The steps in the evaluation process and the order of the chapters in this dissertation are related. There is a natural timeline which occurs in evaluating ombudsman offices over the long term: planning for evaluation, developing a results-based management accountability framework (RMAF), initial comparisons, formative evaluation, and summative evaluation. This order is reflected in the chronology of the chapters.

The dissertation considers, by experiential activity, the key concepts of Ombudsmanship which may be evaluated: independence, impartiality, confidentiality, and neutrality. These are assessed against criteria developed in the ombudsman and evaluation literature, standards found at the International Organization for Standardization; and by the development of new and applicable criteria in the research. Chapter Two demonstrates that there is a lack of literature which may be used by Ombudsman practitioners for evaluation purposes; and the dissertation's experiential researches, and the

¹³ ICANN Office of the Ombudsman, 2007, **Practitioner's Guide to Evaluating Ombudsman Offices**; International Ombudsman Institute, 2008, **Practitioner's Guide to Evaluating Ombudsman Offices, Occasional Paper 84**

subsequent practitioner's guide, mark an augmentation of the body of knowledge concerning the evaluation of Ombudsman operations.

1.5.1 Research Focus

This dissertation is focused on conducting research, which has as its goal contributing to the design and development of evaluation tools to be used by ombudsman practitioners to gain insight about their operations. This is accomplished through action-based research. Druckman states that action research is “flexible, relatively unstructured, and driven largely by the consumer of the research project ... action research is inductive in the sense of acquiring insights from the ongoing participation in the process of doing the research.”¹⁴ Druckman further points out that that action research asks the question, “Does it work?” while theoretical research asks the question, “How or why does it work?”¹⁵ This research is focused on “What evaluation tools can help ombudsman demonstrate their value?” and not, for example, “Why do some tools work better than others?”

Druckman indicates that there have been concerns about the contributions made by action research, in that action research often examines processes rather than paradigms and structures. Druckman stipulates, however, that meaningful change may result from action research. “The discovery and implementation functions of research are more important than the qualities of design and analysis. The method of engendering change is the primary task of the researcher.” The focus of this research is to create a change in the manner in which ombudsman may demonstrate worth. As Dr. Male points out,

¹⁴ Druckman, Daniel, 2005, **Doing Research, Methods of Inquiry for Conflict Analysis**, Sage Publications p315

¹⁵ Ibid p312

“Further probing in to the issue of the ... Ombudsman’s demonstration of value is worthy of further research.”¹⁶

1.5.2 Research Context

The action-based research in this dissertation is conducted through the triangulation of literature review, quantitative and qualitative data collection, and analysis.¹⁷ Finally, the research culminates in the design and development of evaluation tools for ombudsman operations.¹⁸

Druckman notes some guidelines for applied or action-based research that correlate to the three submethodologies cited in the paragraph above, and which have been followed in this research project:

- Embrace the academic work that has been done on the applied topic;
- Develop expertise in the applied research setting; and
- Understand what can and cannot be accomplished in the research setting.¹⁹

The methodology in this dissertation initially involves a review of the existing literature, criteria and standards, and practitioner reports that relate to ombudsman evaluation. There is a general paucity of both academic literature and evaluation reports that relate to the field of ombudsmanship. Ayeni, writing in 1993, stated:

¹⁶ Male, Barbara, 1999, **Assessing Ombudsman Performance: Two Cases Studies in North America**, Doctoral Dissertation, University of Southern California, UMI Dissertation Services, Ann Arbor, MI p345; See 2.2 for a list of Dr. Male’s recommendations for future research

¹⁷ Elix, Jane, 2005, **More than resolution: System design for the management of intractable natural resource conflict in Australia**, Doctoral Dissertation, La Trobe University p18

¹⁸ See Appendix 11, *A Practitioner’s Guide to Evaluating Ombudsman Offices*

¹⁹ Druckman, Daniel, 2005, **Doing Research, Methods of Inquiry for Conflict Analysis**, Sage Publications p313

Two principal reasons account for this. First, a programme to enforce accountability (such as the ombudsman) brings up unique and intellectually taxing difficulties in regard to evaluation. This problem is in turn fed by the poor state of the field of programme evaluation in general. The state of the field is even more pathetic when we consider the situation in developing countries. All lead to the second point: the fact that intellectual helplessness, coupled with a natural flair for convenient research, have put the ombudsman literature in a situation in which systemic evaluation is generally unpopular. It sounds even more immoral to suggest the need to evaluate a programme to promote the interests of ordinary, often helpless, citizens.²⁰

Generally, ombudsmen conduct their work in private and in confidence. This has been seen as a barrier by the ombudsman practitioner community to evaluation on some level. However, the dissertation argues that despite the closely guarded independence and confidentiality, that Ombudsman Offices may conduct evaluations which do not dilute either of those “pillars” of Ombudsmanship.

As Ombudsmen are usually considered to be the last resort in an administrative redress process, their findings and recommendations are generally not subject to appeal. Additionally, there appears to be a natural reluctance to participate in an evaluation process which may impact or encroach on the fundamental principles of confidentiality and finality. These factors have likely affected the volume of ombudsman evaluation reports in the literature.

²⁰ Ayeni, Victor, 1993, Evaluating Ombudsman Programmers, in *The Ombudsman Journal*, Edmonton, AB, p68

The literature is examined and reported on in: Chapter Two - the literature review; Chapter Four considers using generic standards; Chapter Five, which deals with professional standards; and Chapter Six, which develops and analyzes criteria from the literature and applies them to ombudsman operations.

The research regards not only academic and practitioner reports and analyses, but also looks at primary source documentation. The results of this research are reported in the discussion on the development and use of professional standards in Chapter Five. In particular, the review includes source documents used in the development of the American Bar Association Standards for Ombudsman.

The second stage in the research methodology has involved the collection of data about an ombudsman operation. The ICANN Office of the Ombudsman was used as the test case for data collection methods for this research. This data collection involved an action-based in-depth case study of the ICANN Office of the Ombudsman. The evaluation tools developed by the ICANN Ombudsman may help to define this field of practice and study. This dissertation tests these tools.

Data is collected through a number of sources, including environmental observations, comparative ombudsman operations, source documents, the media and blogosphere; and systems user surveys. This data collection methodology reflects the action-based evaluation plan recommended to ombudsman practitioners.²¹

²¹ See Chapter 3, Introduction

Analysis is conducted with input from the literature and data collection. The action-based research analyzes these inputs in terms of the research focus; in other words, “What evaluation tools can help ombudsman demonstrate their value?” Analysis of the literature and data is reported on in Chapter Four on using generic standards; Chapter Five on professional standards; Chapter Six on developing criteria from the literature and applies them to ombudsman operations; Chapter Seven on comparing ombudsman operations; Chapter Eight, the system user survey; and in Chapter Twelve, the conclusion.

Analysis is augmented by the use of a third-party reviewer²² who reviewed and commented on three evaluation studies tested with the ICANN Office of the Ombudsman.²³ The use of third-party reviewers implies that a knowledgeable, independent observer is opining on the evaluation, and this increases the perception of veracity when reporting on the evaluation.

Mr. John Zinsser²⁴, the third-party reviewer employed in these test evaluations, has stated the following:

... the ICANN Office of the Ombudsman has developed and initiated the single most complete, deliberate, and meaningful assessment process deployed in the ombuds field to date. This process allows the Office to accurately declare it is structured to, and appears to function as an ideal executive ombuds on behalf of the ICANN regulated community.²⁵

²² See Chapter 8.2, and Appendix 11, Introduction

²³ See Appendices 5, 7, 10

²⁴ John W. Zinsser is co-founder and principal of Pacifica Human Communications, which specializes in one-on-one, small group, and team facilitation, with an emphasis on conflict resolution and norms/values clarification. He is a member of the United States Ombudsman Association and the Association for Conflict Resolution, for which he is Chair of the Ombuds Section.

²⁵ ICANN Office of the Ombudsman, 2006, **Sao Paulo Remarks**, <http://www.icann.org/presentations/ombudsman-sp-04dec06.pdf> (Accessed January 28, 2007)

The final step in this action-based research methodology is the development and design of ombudsman evaluation tools, which are informed by a feedback process and which may be used by ombudsmen offices of any size, remit, or activity. These tools are discussed in Chapter Three on evaluation planning; Chapter Four on generic standards; Chapter Five on professional standards; Chapter Six on criteria from the literature; Chapter Seven on statistical comparisons; Chapter Eight on user surveys; Chapter Nine, which contains revisions to the evaluation plan based on active research observations; Chapter Ten on completing the final evaluation; and finally in Appendix 11, titled *A Practitioner's Guide to Ombudsman Evaluation*.

1.6 Key Entities

Before introducing these entities in the main body of the dissertation, it will be helpful for the reader to be introduced to the key entities in this dissertation.

1.6.1 Internet Corporation for Assigned Names and Numbers (ICANN)

The Internet Corporation for Assigned Names and Numbers (ICANN) is an internationally organized, private non-profit corporation having responsibility for Internet Protocol (IP) address space allocation, protocol identifier assignment, generic (gTLD) and country code (ccTLD) top-level domain name system management, and root server system management functions. These services were originally performed under United States Government contract by the Internet Assigned Numbers Authority (IANA) and other entities. ICANN now performs the IANA function.

As a private-public partnership, ICANN is dedicated to preserving the operational stability of the Internet; to promoting competition; to achieving

broad representation of global Internet communities; and to developing policy appropriate to its mission through bottom-up, consensus-based processes.²⁶

ICANN is the agency that administers the Domain Name System (DNS). It is responsible for the global administration of the root server system and the top-level domains such as .com, .net, etc. and the more than 250 ccTLDs such as .au, .ca, and the rest.

1.6.2 ICANN Office of the Ombudsman

The ICANN Office of the Ombudsman is established in ICANN's Bylaw V, which endows the Ombudsman with a quasi-statutory authority. By having an enabling legislative instrument, the ICANN Ombudsman is similar to a classical ombudsman. Bylaw V and the Ombudsman Framework provide direction on the jurisdiction, powers, and operation of the Ombudsman.

The Office of the Ombudsman was the last institutionalization of the ICANN “Reform” process which gives the ICANN community²⁷ greater access to mechanisms to respond to unfair or disliked decisions or actions of the organisation.²⁸ Another mechanism is the independent review process (IRP). A community member who disputes a decision or action of the organisation may request an IRP. The IRP involves a contracted outside third-party who investigates or hears evidence, then makes a finding. The party not successful in the IRP may be assessed costs. The ombudsman process is

²⁶ ICANN, 2006, **ICANN Information**, <http://www.icann.org/general/> (accessed January 28, 2007)

²⁷ ICANN is a public – private partnership, and its community includes: nation - state governments; private industry; internet commerce; international organizations; civil society; country code administrators; scientists; academics and students; and individual internet users.

²⁸ See <http://www.icann.org/committees/evol-reform/>, for information on the Committee on ICANN Evolution and Reform, and its recommendations, including the establishment of the Office of the Ombudsman.

informal and flexible, while the IRP is formal and rules based. The IRP has yet to be accessed by any stakeholder or community member.

The Ombudsman is an independent, impartial, and neutral officer of ICANN. The Ombudsman's function is to act as an alternative dispute resolution (ADR) office²⁹ for the ICANN community who may wish to lodge a complaint about a staff or board decision, action, or inaction. The purpose of the Ombudsman Office is to ensure that the members of the ICANN community are treated fairly. The Ombudsman is expected to act as an impartial officer and attempt to resolve complaints about unfair treatment by ICANN using ADR techniques such as negotiation, mediation, shuttle diplomacy, good offices, fact finding, investigation, and reporting and recommendation. The Ombudsman does not have the power to make, change, or set aside a policy, administrative or Board decision, act, or omission, but does have the power of moral suasion by publicizing the results of an investigative process to create changes to individual events or systemic problems.

The ICANN Ombudsman has jurisdiction over:

- Decisions, actions, or inactions by one or more members of ICANN staff;
- Decisions, actions, or inactions by the Board of Directors which may be inconsistent with the Articles of Incorporation or the Bylaws.

The ICANN Ombudsman does not have jurisdiction over complaints concerning:

²⁹ See footnote 8 for a definition of ADR. ICANN Bylaw V states that the Ombudsman may use ADR techniques such as clarifying the issues and using conflict resolution tools such as negotiation, facilitation, and "shuttle diplomacy".

- Internal administrative matters;
- Personnel issues;
- Issues relating to membership on the Board; nor issues relating to vendor/supplier relationships.³⁰

1.6.3 ICANN Board of Directors

The Board of Directors is composed of members nominated by ICANN's various supporting organisations (Generic Names Supporting Organisation, Address Supporting Organisation, and County Code Names Supporting Organisation), and independent members selected by a Nominating Committee. The Board Chair until November 2007 was Dr. Vinton Cerf, one of the inventors of the Internet TCP/IP system of unique identifiers.

A key group in the evaluation process is the Board Audit Committee, which is chaired by Board member Njeri Rionge of Kenya. The Audit Committee is charged with the review and evaluation of the organisation's operations, and has been the sponsor and monitor of the third-party review of in-house ombudsman assessments.

1.7 Overview of the Chapters

This dissertation is divided into 11 chapters. In addition, Appendix 11 is A *Practitioner's Guide to Evaluating Ombudsman Offices* that enables practitioners to apply the evaluation principles developed in the chapters to their operations.

³⁰ ICANN Office of the Ombudsman, 2006, **Creating Dialogue, Affirming Fairness**, Pamphlet

Chapter Two provides a review of the literature concerning the evaluation of ombudsman offices. As there is a lack of literature in this field, this is a short chapter. This lack of literature emphasizes the relevance of and need for this work. In response to the lack of literature dealing with ombudsman evaluations, the chapter also examines the broader literature concerning evaluations generally and in particular the evaluation of dispute resolution schemes.

Chapter Three considers the planning required to establish an evaluation process. It includes references to models such as the results-based management accountability framework (RMAF) and the logic model.

Chapter Four considers the application of International Organisation for Standardization (ISO) standards in complaints handling as they relate to ombudsman functions as well as regulatory requirements.

Chapter Five reviews standards of practice in ombudsmanship, and documents used to develop objectives and value statements.

Chapter Six reports on a trial substantive evaluation conducted with the ICANN Office of the Ombudsman. It is a literature-based evaluation. A list of 54 criteria which an ombudsman's office may use to gauge key factors of establishment and operation has been developed through a literature review.

Chapter Seven considers the second substantive review completed by the ICANN Ombudsman, which it is a longitudinal comparison of the ICANN Ombudsman with other established offices. Chapter Eight outlines the third major review for the ICANN Ombudsman and reports on experiences and observations in conducting a client survey.

Chapter Nine considers the summative evaluation activity of reviewing the results-based management framework and testing the various performance criteria. The forward-looking activity of planning the summative evaluation is reported in Chapter Ten. Chapter Eleven is the summary and conclusion. It will address the overall framework of the dissertation to determine if this blueprint for evaluation actually assists ombudsmen in evaluating their establishment and operations.

Chapter Two

Review of the Literature

2.1 Introduction

We found very little research on this topic.³¹

... but a review of the academic literature shows very little research has been completed around better practice approaches to evaluation and performance measurement.³²

... issues about who evaluates, how evaluations occur and what is evaluated, have meant that much of the ADR that occurs in the community ... remains “unmeasured”.³³

The literature on the evaluation of ombudsman programmes can be divided into three categories: theoretical discussion, applied academic reviews of ombudsman programmes, and practitioner reviews of ombudsman programmes. There is also some information that can be applied from the use of analogous complaint handling standards developed by the International Organisation for Standardization (ISO) and its member standards bodies such as the American Standards Association (ASA) and Standards Australia.

In all categories the volume of literature is scant, and in the case of theoretical research, is often also dated. However, each category adds to the overall body of knowledge concerning the evaluation of ombudsman offices.

³¹ Aufrecht, Steve, and Hertogh, Marc, 1999, **Evaluating Ombudsman Systems**, in **Right Wrongs, The Ombudsman in Six Continents**, Gregory, Roy and Giddings, Phillip eds, IOS Press, Amsterdam p395

³² Warner, Rob, 2007, Performance Measurement Considerations for Dispute System Designers – What Can be Measured Gets Managed, What is Managed Gets Improved, 1 Electronic Conflict Resolution Journal, p2

³³ Sourdin, Tania, 2005, **Alternative Dispute Resolution, Second Edition**, Lawbook Co., Pyrmont NSW p247

In general terms, the compendium of literature provides little tangible practical guidance for ombudsman practitioners to conduct wide and deep assessments of their operations, independence, neutrality, or impartiality. Therefore, the literature review looks at a wider range of evaluation literature than simply that related to ombudsmanship. The review considers evaluation in respect of alternative dispute resolution (ADR) and in broad general terms.

2.2 Theoretical Research

The review of the theoretical research for this dissertation reveals three specific major works dealing with ombudsman evaluation.³⁴ These three theoretical papers are Danet 1978, Ayeni 1993, and Aufrecht 1999, and the volume of this literature totals 56 pages, not including endnotes or references. These three journal articles deal primarily or uniquely with classical ombudsman operations. The focus, scope, volume of information provided, and age of this material point to large gaps in the literature.

Aufrecht et al., in their 1999 paper, "Evaluating Ombudsman Systems," stated:

We found very little research on this topic. Two key articles were the 1978 paper by Brenda Danet and the 1993 paper by Victor Ayeni. Danet applied the then current program evaluation literature to studying complaint handling, specifically the

³⁴ These include: Danet, Brenda, 1978, **Towards a Method to Evaluate the Ombudsman Role**, Administration & Society 1978; 10; 335, Sage Publications; Ayeni, Victor, 1993, **Evaluating Ombudsman Programmes**, in **The Ombudsman Journal**, Edmonton, AB; and, Aufrecht, Steve, and Hertogh, Marc, 1999, **Evaluating Ombudsman Systems**, in **Right Wrongs, The Ombudsman in Six Continents**, Gregory, Roy and Giddings, Phillip eds, IOS Press, Amsterdam

ombudsman role ... Ayeni's 1993 article is a response to Danet from the perspective of a scholar who has observed Ombudsman offices in Africa. ³⁵

Ayeni and Danet, as summarized by Aufrecht, go to some lengths to explain that it is difficult to evaluate an ombudsman. They further agree on the lack of literature available. Danet, writing in 1978, stated that "this literature proves disappointing for the purpose at hand, both because evaluation research itself is full of problems and because the ombudsman role is in some ways very different from the usual settings studied by evaluation researchers."³⁶

Ayeni states that "a programme to enforce accountability (such as the ombudsman) brings up unique and intellectually taxing difficulties in regard to evaluation." He also states that "intellectual helplessness, coupled with a natural flair for convenient research, have put the ombudsman literature in a situation in which systemic evaluation is generally unpopular."³⁷

As these articles are dated, they therefore lack currency with modern evaluation methodologies or processes. None of the authors could have considered the use of such modern tools as the logic model or the results based management accountability framework to frame an ombudsman evaluation. Danet and Ayeni cite issues dealing with confidentiality and independence, and impediments that these may cause for evaluators, but there is little advice to be found on how to overcome these challenges.

³⁵ Aufrecht, Steve, and Hertogh, Marc, 1999, **Evaluating Ombudsman Systems**, in **Right Wrongs, The Ombudsman in Six Continents**, Gregory, Roy and Giddings, Phillip eds, IOS Press, Amsterdam p396

³⁶ Danet, Brenda, 1978, **Towards a Method to Evaluate the Ombudsman Role**, Administration & Society 1978; 10: 335, Sage Publications p340

³⁷ Ayeni, Victor, 1993, **Evaluating Ombudsman Programmers**, in **The Ombudsman Journal**, Edmonton, AB, pp 67–88 p68

Issues of scope and reach are problematic in all three articles. The scope of the evaluation techniques described is very limited, and the reach is restricted to classical ombudsman models.

Ayeni talks of “the limited scope of Danet’s measures”.³⁸ Danet’s work is primarily concerned with developing some quantifiable measures and arguments about why this cannot be accomplished. There is very little practical information for ombudsmen in these first two works.

Ayeni’s work is primarily a review of Danet’s theories, which were written 15 years previously. He then applies these to classical ombudsmen practicing in Africa, and therefore his reach also is very restricted to that continent, and the limited number of ombudsman operations there at the time of his writing.

Aufrecht et al., writing in a compendium, state that “this chapter is not meant to be a step-by-step recipe for evaluation. Rather it is an overview of what is involved in evaluating Ombudsman offices, a starting point.”³⁹ This article is the most practitioner friendly of the three, in that ombudsmen may actually take away some meta points to assist in the design of evaluations, or at least in developing a set of “Why evaluate?” questions or theories to test the need to evaluate.

Taken in sum, all of the above analysis indicates that the academic research in the literature is limited on the specific question of ombudsman evaluation and provides little assistance in terms of evaluation.

³⁸ Ayeni, Victor, 1993, **Evaluating Ombudsman Programmers**, in **The Ombudsman Journal**, Edmonton, AB, pp 67 – 88 p74

³⁹ Aufrecht, Steve, and Hertogh, Marc, 1999, **Evaluating Ombudsman Systems**, in **Right Wrongs, The Ombudsman in Six Continents**, Gregory, Roy and Giddings, Phillip eds, IOS Press, Amsterdam p393

2.3 Applied Academic Reviews of Ombudsman Programmes

There has been a single doctoral dissertation written on ombudsman evaluation. Dr. Barbara Male's 1999 Doctor of Public Administration dissertation is titled *Assessing Ombudsman Performance: Two Case Studies in North America*. It is the definitive (and only) academic work in the field.

Dr. Male conducted ambitious evaluations of two ombudsman systems in separate countries with similar but different governmental systems. Once she had completed individual systems analyses, she made a comparison between the two offices, looking at such things as differences in jurisdictions and powers, and commonalities in perceptions held by the public. For the most part the analysis was qualitative and relied on broad ranging surveys and interviews with ombudsmen, ombudsmen staff, and system users.

For the purposes of this dissertation, the key component of Dr. Male's work was her development of key questions for future research. Those questions are:

- Does the use of an evaluability assessment result in a substantive evaluation of the ombudsman office?
- How is the ombudsman best able to demonstrate value and contribution?
- What tools can be employed to measure the unintended consequences or intangible costs associated with the ombudsman function?
- What political challenges are faced by involving stakeholders in building the performance based management process when the position must be neutral and transparent to political influences?

- What opportunities and examples are available to encourage ombudsman in collaboration in building best practices and benchmarks of the best-in-class processes and methodologies?
- What business processes would enhance the public ombudsman effectiveness and efficiency, including information management, planning and control; forecasting; decision support; and system design?
- What external and internal assessment processes hold the most relevance to the public ombudsman in such projections as the future trends in populace need or in demographic composition, government services, or emerging issues?"⁴⁰

These questions for future research reflect the theme and content of this dissertation. To summarize Dr. Male's questions into a single statement or question, "What can an ombudsman do and what tools can an ombudsman use to show value, results, and integrity?" This is the exact purpose of this dissertation.

Dr. Male summarizes the existing literature on the question's answer to "why evaluate the ombudsman?" as follows: accountability, understanding community needs and ombudsman impacts, performance improvement, and demanding a willingness to undergo external scrutiny. ⁴¹ Fowlie's dissertation, at paragraph 1.4, enumerates six reasons to evaluate Ombudsman operations which were previously developed:

Demonstrating Value

Is it working?

⁴⁰ Male, Barbara, 1999, **Assessing Ombudsman Performance: Two Cases Studies in North America**, Doctoral Dissertation, University of Southern California, UMI Dissertation Services, Ann Arbor, MI pp346-347

⁴¹ *ibid* p3

What can be improved?

What are the existing strengths?

Ensuring service standards

Demonstrate integrity⁴²

The two lists of questions were developed independently and with a several year gap between their individual creations. While their creation is coincidental, it is important that the questions are very similar, the notable difference being the inclusion of existing strengths found in the list created by the ICANN Office of the Ombudsman. Based on the contributions by Dr. Male and this dissertation, a definitive and useful list of “why evaluate” questions now exists in the literature.

Rubin and Brown wrote about the role of the third party in dispute resolution. While not specifically constructed with the ombudsman in mind, their work does apply:

First and foremost, are such interventions effective? Second, if they are effective, why? (In other words, what functions do third parties serve?) Finally, what are the psychological mechanisms that make bargainers receptive to such interventions?

Raising such questions makes it immediately clear that psychological research directly concerned with third parties has been scant.⁴³

Rubin and Brown’s questioning of the impact of the third party in dispute resolution is consistent with basic evaluation questions which would be develop in an evaluation blueprint:

⁴² ICANN Office of the Ombudsman, 2006, **Evaluation Process Development – Report to Audit Committee**, PowerPoint Presentation

⁴³ Rubin, J., Brown, B., 1975, **The Social Psychology of Bargaining and Negotiation**, Academic Press, New York p56

- Did the ombudsman's involvement create an outcome or resolution?
- If there was an outcome or resolution, why did it happen?'
- On what basis was the ombudsman's intervention accepted by the parties?

2.4 Practitioner Evaluations

Many ombudsman practitioners perform some level of evaluation on a regular basis. This is because most ombudsmen operate under a statutory regime or terms of reference that require them to produce an annual report of activities. While not essentially an evaluation document, the annual report provides information to the ombudsman and the agency it serves about complaint volume, types of issues considered by the ombudsman, and resolutions. These reports also provide information to the public, and enable further discussion about staffing levels, budgets, jurisdiction, mission creep⁴⁴ and effectiveness. Generally, these annual reports do not demonstrate effectiveness with respect to either evaluation criteria or in analyzing performance in comparison with what are considered the pillars of ombudsman practice: confidentiality, impartiality, and neutrality.

⁴⁴ The Oxford Pocket Dictionary of Current English defines "mission creep" as: • n. a gradual shift in objectives during the course of a military campaign, often resulting in an unplanned long-term commitment. such a development in a nonmilitary context, resulting in undesirable policies or consequences: *the IMF's mission creep has been consistently endorsed by the Treasury Department as a way of furthering U.S. economic foreign policy.* Wikipedia defines mission creep as the expansion of a project or mission beyond its original goals, often after initial successes. The term often implies a certain disapproval of newly adopted goals by the user of the term. Mission creep is usually considered undesirable due to the dangerous path of each success breeding more ambitious attempts, only stopping when a final, often catastrophic, failure occurs. The term was originally applied exclusively to military operations, but has recently been applied to many different fields, mainly the growth of bureaucracies.

There is an important role for annual reports in the relationship between action research and change. Annual reports reflect constructive storytelling about ombudsman operations, and Druckman believes that stories are “accessible, fluid, vivid and powerful forms of expression that can; they can, however, also be divisive by emphasizing us and them distinctions.”⁴⁵

The research for the literature review shows that some excellent, although limited, evaluation reviews have been conducted by or on behalf of ombudsmen or the agencies they serve. This section reports on the most relevant reports.

Both the Office of the Inspector General of the United States Department of Health and Human Services and the National Academy of Sciences have completed qualitative and formative evaluations of the delivery of ombudsman programmes in nursing home environments in the United States. The National Academy of Sciences report commented on the difficulty of evaluating ombudsmen:

The Committee attempted to assess the effectiveness of the state LTC⁴⁶ ombudsman program from several perspectives. The underlying impediment to sound assessment has been the lack of reliable and valid information that could be fit into any defensible summative evaluation format. For that reason, the committee opted for a formative evaluation effort—one that would highlight program issues, etc. ...⁴⁷

Neither of the studies contributed much in the way of criteria setting or standards development. Both studies came to the same relative conclusion,

⁴⁵ Druckman, Daniel, 2005, **Doing Research, Methods of Inquiry for Conflict Analysis**, Sage Publications p317

⁴⁶ Long term care

⁴⁷ National Academy of Sciences, Real People Real Problems: An Evaluation of the Long-Term Care Ombudsman Programs of the Older Americans Act (Executive Summary) <http://books.nap.edu/readingroom/books/rprp/summary.html> (accessed December 5, 2006) p8

as stated by the Inspector General: “Ombudsmen, with their unique combination of functions—visitation, complaints and crisis response, and advocacy—play an important role in assuring quality of care in nursing homes.”⁴⁸

Duncan Fowler, a retired classical ombudsman, has been the ombudsman for the state of Alaska and King County, Washington (which includes the area near Seattle), and the deputy ombudsman for the state of Iowa. In retirement, Fowler prepared one of the leading studies of an ombudsman operation. In March 2004, Jackson County Missouri contracted with Fowler to review the operations and establishment of its Office of Human Relations and Citizen Complaints (OHRCC). Fowler’s review measured the OHRCC’s compliance with the United States Ombudsman Association (USOA) Standards of Practice for a governmental ombudsman. Applying the USOA standards, Fowler did a critical analysis and developed a meaningful set of recommendations for the county government.

Fowler’s report and its recommendations were reviewed and commented on by a committee consisting of three members of the USOA, all of which have served or are currently serving as its president. The body of literature would indicate that this was the first use of peers to validate or comment on the evaluation report of an ombudsman function. The ICANN Ombudsman provides further examples of the application of peer review to evaluations conducted by an office of the ombudsman. These ICANN Ombudsman peer reviews are documented in later chapters.

⁴⁸ Office of the Inspector General, Department of Health and Human Services, **Long Term Care Ombudsman Program: Overall Capacity** 1999 (Report) pp2–3

During 2004, the Australian Banking and Financial Services Ombudsman prepared an interesting review of its ombudsman scheme. The Ombudsman Service produced a lengthy and detailed background paper in June 2004. Following this, an outside consultant contracted by the Ombudsman performed an independent review, with a report delivered in November 2004. This independent review relied on a list of six key benchmarks: *independence, accessibility, fairness, accountability, efficiency, and effectiveness*. It then evaluated these benchmarks, and produced a series of findings and recommendations for each.

Interestingly, the independent review, while commenting on fairness, does not define fairness or what elements of administrative or procedural fairness were used in considering the benchmarking exercise. It would seem relevant and important to have defined this term in order to be able to determine whether the agency was actually being fair.

These two reports followed a 2002 review of the Financial Industry Complaints Service. In that report, fairness was defined as follows:

Like 'justice', the term 'fairness' resists easy definition. Fairness can be described in many different ways including the following:

Fairness can be expressed in terms of general community standards or expectations. Community expectations of a 'fair' dispute resolution system may include expectations about pursuit of the truth and about reasonable levels of cost and delay (including equality of access).

Fairness based upon the observance of procedures and procedural rules.

Fairness may relate to ensuring that inequalities between the parties do not unduly influence the outcome of the process.

Fairness may be related to party control over the dispute resolution process and providing parties with an opportunity to be heard.

Fairness may relate to party consent to entry into the dispute resolution process.⁴⁹

The United Nations Ombudsman serves the UN staff as an organisational ombudsman. In December 2005, the Ombudsman convened a panel consisting of the past president of The Ombudsman Association, a judge with the World Bank, and a former Ombudsman with the International Monetary Fund. The Office of the Ombudsman developed a set of terms of reference (TOR) for a mid-term review of that Office's operations. The panel conducted a review based on that TOR.

As a second review step, the Office of the Ombudsman also convened a rapid assessment peer review. The rapid assessment peer review was a collegium of other ombudsmen from within the UN system as well as UN staff members who participated in a focus group. The methodologies of these two reviews appear to have consisted mainly of sounding board conversations on a qualitative level with both UN staff members and staff from the Office of the Ombudsman. Each review produced a report that provided feedback and a number of recommendations, and gave the UN staff ombudsman insight on issues concerning the broad functioning of ombudsmanship for an international organisation with staff scattered across the globe.

⁴⁹ Sourdin, Tania and Jane Elix, 2002, **Review of the Financial Industry Complaints Service 2002 – What are the Issues?** Community Solutions, La Trobe University, University Of Western Sydney pp45–46

The reviews appear to be based greatly on qualitative discussions about the reputational value, service delivery, and geographic location of ombudsman services. There is no indication of the manner in which the interviews were undertaken, demographic indicators such as age, gender, workplace location, job function or education, or how many staff members participated.

The key recommendations of both reviews were transmitted by the Ombudsman to the Secretary General and the General Assembly in an annual report dated October 15, 2006. This report is unique for two reasons: first, it uses a combination of client-based and external reviewers on separate panels (noted above), and second, it publicly documents the evaluation of an organisational ombudsman.

Harrison has provided a review of interviews conducted with clients of a particular university ombudsman. While not a practitioner review per se, it is a review of client satisfaction relating to a unique ombudsman operation.

Harrison brings into the literature a unique perspective of how a satisfaction gap can exist between an ombudsman and its client. Harrison states:

The Ombud's philosophy of success is one in which all parties respect the rights and positions of the other parties; engage in open, honest, and non-defensive dialogue about their differences; and make and act on decisions because it is the correct thing to do, not because of coercion or force.⁵⁰

Harrison introduces the idea that the perceptions of satisfaction of the ombudsman and the client may be quite different at the end of the process.

This is the satisfaction gap noted above. In essence, Harrison acknowledges

⁵⁰ Harrison, Tyler, **What is success in the Ombudsman Process? Evaluation of a University Ombudsman**, Conflict Resolution Quarterly, (Vol 21-3, pp313–335) Spring 2004 p323

that even if the ombudsman has followed and applied the rules of jurisdiction and procedural fairness, and is satisfied with the outcome, the client may still harbour feelings of dissatisfaction. This gap is likely based on the client's perception of substantive or outcome fairness being aligned with procedural fairness; while the ombudsman is concerned with jurisdiction and administrative fairness, not with substantive fairness. The client-based surveys conducted by the ICANN Office of the Ombudsman and reported on later support this assertion.

Gerald Caiden is a professor of Public Administration at the University of Southern California.⁵¹ In 1983 he championed an effort to produce and edit a comprehensive two volume review of ombudsmanship around the world, titled *International Handbook of the Ombudsman*. In hermeneutic context, Danet's work was five years old at the time, and Ayeni's work would not be published for another 10 years.

The nearly 600 pages of material produced by Caiden provide less than 10 pages of information on evaluation. Aufrecht (previously cited for his 1999 article) et al. compare the operations of the Alaskan State Ombudsman with the Anchorage (Alaska) City Ombudsman.⁵² They conclude that they had difficulty in defining effectiveness and in finding qualitative data to measure impacts.

⁵¹ Dr. Caiden was Dr. Barbara Male's academic supervisor for her dissertation *Assessing Ombudsman Performance*

⁵² Aufrecht, Steve, and Brelsford, Gregg, The Administrative Impact of the Alaskan Ombudsman, in Caiden, Gerald, ed, 1983, *International Handbook of the Ombudsman, Evolution and Present Function*, Greenwood Press, Westport, CT, USA pp239–240

Scott, in the same volume, while discussing the Hong Kong Ombudsman makes several references⁵³ to the difficulty in applying Danet's loose measures to evaluate ombudsman performance. He notes that, "... evaluation of these criteria is difficult, and no more than an impressionistic picture can be given."⁵⁴

Caiden himself makes the following observation with respect to Danet's work:

... Brenda Danet has pointed out how little has been done to evaluate the institution of the Ombudsman outside the United States and how difficult it is to compare the different offices ... Above all, she stresses how subjective judgment is unavoidable ...⁵⁵

The Organisation for Security and Co-operation in Europe (OSCE) has been instrumental in the establishment of democratic government in the former Yugoslav Republics. This includes the institutionalization of the Office of the Ombudsman. The OSCE has commissioned two evaluations of OSCE sponsored ombudsman programs.⁵⁶ Both are relevant to this research, not so much for the content of the reports but rather for the limited methodologies used, indicating that as late as 2005 even international organisations responsible for new government structures lacked a firm hold on ombudsman evaluation. For example, the Croatia evaluation had as its goal, "the preparation of a report that would identify any legislative, financial, or logistical limitations affecting the work of the Ombudsman, and suggest steps ... to the

⁵³ Scott, Ian, **Hong Kong**, in Caiden, Gerald, ed, 1983, **International Handbook of the Ombudsman, Country Surveys**, Greenwood Press, Westport, CT, USA p118

⁵⁴ *ibid*

⁵⁵ Caiden, Gerald et al., The Institution of Ombudsman, in Caiden, Gerald, ed, 1983, **International Handbook of the Ombudsman, Evolution and Present Function**, Greenwood Press, Westport, CT, USA p18

⁵⁶ Croatia, 2003; Macedonia, 2005

institution's position."⁵⁷ Both this and the 2005 Macedonia Report⁵⁸ were based on data collection from two sources: interviews with ombudsman officials and senior members of the government and other institutions, and country specific reports, legislation, and administrative manuals. In the case of Macedonia, Gottehrer's *Essential Characteristics of an Ombudsman* was also consulted.⁵⁹ The list of persons interviewed in both evaluations would indicate that less than five ordinary citizens provided input to the researchers.

The successful reviews undertaken by ombudsman practitioners⁶⁰ counter the assertions by Danet and Ayeni regarding the difficulty in evaluating an ombudsman operation. While these practitioner reviews are limited, they do provide insight to ombudsman community's willingness and desire to use evaluation techniques to document or improve service.

A small number of practitioner-based documents have been identified which create lists of attributes, characteristics, or standards; which may be dissected to provide some guidance into the development of broad based evaluation questions and criteria. The three main works are:

Standards for the Establishment and Operation of Ombuds Offices, by the American Bar Association (ABA)⁶¹;

⁵⁷ Hucker, John, 2003, **The Ombudsman in Croatia: An Expert Analysis**, Organisation for Security and Co-operation in Europe, Mission to Croatia

⁵⁸ Manninen, Timo, 2005, **Independent Assessment of the Ombudsman Institution**, Organisation for Security and Co-operation in Europe, Spillover Monitor Mission to Skopje

⁵⁹ See Chapter 6 for further information in this document.; It would be worthy of further research to implement the "Fifty Questions for Self Evaluation" in Appendix 6 of this dissertation for future OSCE quick assessments.

⁶⁰ i.e., Fowler, Duncan, 2004, **A review of the Office of Human Relations and Citizen Complaints, Jackson County Missouri, For the Jackson County Legislature**; Harrison, Tyler, **What is success in the Ombudsman Process? Evaluation of a University Ombudsman**, Conflict Resolution Quarterly, (Vol 21-3, pp313–335) Spring 2004

⁶¹ American Bar Association, 2004, **Standards for the Establishment and Operation of Ombuds Offices**, <http://www.abanet.org/adminlaw/ombuds/115.pdf> (accessed October 30, 2006)

Essential Characteristics of a Classical Ombudsman, published by the United States Ombudsman Association (USOA)⁶²; and

Creating the Office of the Ombudsman,⁶³ by Rick Russell, a solicitor, ombuds, and alternative dispute resolution practitioner.

The information drawn from these works to develop evaluation questions and criteria is reported on in Chapter Six.

2.5 Development of Ombuds Evaluation Criteria by Other Agencies

An important question for this dissertation concerns the value of unrelated or analogous standards or criteria that can be culled from non-ombudsman agencies. Two agencies provide some criteria for ombudsmen; the International Organisation for Standardization (ISO) and its national partners, and the International Council on Human Rights Policy (ICHRP).

The ISO standards and draft standards are very generic. They may apply equally to the international call centers of international financial institutions, to the customer service department of the neighbourhood grocery store, or to ombudsman operations. However, while the ISO standards may lack specificity, they do provide some helpful frameworks to enable ombudsman practitioners to conduct basic evaluations of their operations and activities. Compliance with the standards also provides practitioners with a reputational success. The application of the standards to ombudsman operations is

⁶² United States Ombudsman Association, 2006, **History of the Public Sector Ombudsman**, http://usoa.non-profitsites.biz/en/About_Us/history.cfm (accessed October 15, 2006)

⁶³ Russell, Rick (date unknown), **Creating the Office of the Ombudsman**, <http://www.agreeinc.com/ombudsman.html> (accessed January 27, 2007)

discussed in subsequent chapters, using the ICANN Office of the Ombudsman as a case study.

The ICHRP in concert with the Office of the United Nations High Commissioner for Human Rights developed a list of elements which contribute to the effectiveness of national human rights institutions. The elements noted include public legitimacy; accessibility; open organisational culture; quality and integrity of members, leaders and staff; diversity of membership and staff; links with civil society; broad mandate; all-encompassing jurisdiction; can make and monitor compliance with recommendations; looks at systemic issues; adequate budget and resources; effective links with peers; and handles complaints speedily and effectively.⁶⁴

These elements may be applied to ombudsman operations as broad principles as the ICHRP notes that in many national jurisdictions, particularly in emerging democracies in the former Soviet Bloc, the ombudsman and the human rights institution are often one and the same. Examples of these institutions can be found in Bosnia, Georgia, and Russia. These institutions are often formed by national governments in anticipation of membership in the European Union (EU) or the North Atlantic Treaty Organisation (NATO).

While national human rights institutions and national ombudsman in some jurisdictions may actually be the same office, these criteria as statements of broad principles may be complimentary to singularly focused ombudsman operations considered by this research. These same criteria⁶⁵ can be applied in ombudsman evaluation processes. The joint ICHRP–Office of the

⁶⁴ International Council on Human Rights Policy, 2005, **Assessing the Effectiveness of National Human Rights Institutions**, Geneva pp7–9

⁶⁵ International Council on Human Rights Policy, 2005, **Assessing the Effectiveness of National Human Rights Institutions**, Geneva pp7-9

United Nations High Commissioner for Human Rights document also cautions institutions to ensure that these broad indicators are interpreted for the context in which they are used.⁶⁶ That is a key message in this dissertation as well, that the strategies put forward in the dissertation do not constitute an ad hoc approach to evaluation, but can be made to fit the context in which they are to be used.

Criteria that can be used in the evaluation of ombudsman operations also can be found in literature not directly related to ombudsmanship. The ISO and the ICHRP both add to the body of literature in this manner.

2.6 Evaluation of Literature Regarding Alternative Dispute Resolution Programmes

Unlike the literature on the evaluation of ombudsmanship processes, there is a larger body of work in the literature for the field of alternative dispute resolution evaluation. Still, even in that body of work, the research concerning the evaluation of ADR programmes is somewhat limited and often specific to the operating context. Deutsch, writing in 2000, stated:

However, I do agree that much of the practice of conflict resolution is not evaluated, or poorly evaluated. This is a lost opportunity to learn from our work ... Systemic evaluation of conflict resolution practices needs to be conceptualized and implemented at the onset of intervention ... Additionally, there would be much benefit from

⁶⁶International Council on Human Rights Policy, 2005, **Assessing the Effectiveness of National Human Rights Institutions**, Geneva p28

longitudinal studies examining the long term effects of training and mediation programs.⁶⁷

Stitt, in his book devotes a small section to evaluation.⁶⁸ The premise for Stitt's work is that any evaluation will be carried out by the design team that designed and developed the ADR system. He sees evaluation as several steps:

- Go back to the stakeholders for feedback;
- Run a pilot project;
- Assess the pilot project

... the assessment should compare disputes that have proceeded through the new processes with a control group that used the old processes. The assessment should explore whether cost savings and time reductions have resulted from the new system (quantitative analysis) and whether disputant satisfaction has increased (qualitative analysis).⁶⁹

Stitt emphasizes collecting data by questionnaire. He uses as an example a court-based mediation pilot project that involved providing a survey questionnaire to participants.⁷⁰

A developing area in the administration of justice and alternative dispute resolution is restorative justice. Elliott defines restorative justice as “an option

⁶⁷ Deutsch, Morton, et al., 2000, **The Handbook of Conflict Resolution: Theory and Practice**, Jossey Bass Publishers, San Francisco p599

⁶⁸ Stitt, Allan, 1998, **Alternative Dispute Resolution for Organisations: How to design a system for effective conflict resolution**, John Wiley and Sons, Toronto pp159–171

⁶⁹ Ibid, p161

⁷⁰ Op cit, p162

for doing justice that is focused on repairing the harm that has been caused by a crime.”⁷¹ Elliott states the following about evaluation:

We desperately need evaluation, and evaluation has to be multi-method and multi-focus.⁷² We need to evaluate processes and outcomes, and we also need to evaluate the goals and functioning of our organisations.

... We also need to think carefully about how we do evaluation, what yardsticks we use, and what values—implicit and explicit—underlie our approach to evaluation.

... We need to make ourselves deliberately accountable to various sectors in society including, and especially those we claim to serve.⁷³

In many respects restorative justice is similar to Ombudsmanship, and the evaluation comments relating to restorative justice may equally apply to Ombudsman operations. Both are alternative dispute resolution mechanisms which employ a neutral third party to bring about redress, if possible. In one circumstance this follows a breach of administrative fairness, and the other, a breach of criminal law. In both, the designated neutral may use a variety of ADR techniques to attempt to resolve the matter, but may not impose remedies. Elliott’s comments are analogously reflective of Ombudsmanship.

Sourdin, in her alternative dispute resolution text, presents a discussion on evaluation as a future trend in the field. Sourdin’s work is closely related to

⁷¹ Elliott, Elizabeth, 2005, *New Directions In Restorative Justice: Issues, Practice, Evaluation*, Willan Publishing, UK p4

⁷² See Chapter 3, Introduction, for a discussion of multifaceted, multipronged approach to ombudsman evaluation.

⁷³ Elliott, Elizabeth, 2005, *New Directions In Restorative Justice: Issues, Practice, Evaluation*, Willan Publishing, UK p300

alternatives to the litigation or court processes. Concerning ADR evaluation, Sourdin states that:

“proof” has been difficult to obtain, partly because there has been little empirical evidence about how the traditional system works, and the costs and benefits of more traditional adjudicatory processes ... (litigants) may have a preference for ADR processes over traditional litigation and it also shows that a high degree of litigant satisfaction is often achieved in the use of ADR. Outside the litigation system there has been little focus on how disputes are resolved.⁷⁴

Sourdin also says that “issues about who evaluates, how evaluations occur and what is evaluated have meant that much of the ADR that occurs in the community (particularly outside the immediate vicinity of the litigation system) remains “unmeasured.”⁷⁵

Sourdin provides information relative to the cost benefit analysis of court based ADR programs conducted in Australia. She reports that studies indicate an average \$15,000 AUD savings difference between matters resolved by ADR without court involvement, and matters resolved after a contested court hearing.⁷⁶ This return on investment (ROI) analysis may be helpful in ombudsman evaluations. If an ombudsman scheme can quantifiably demonstrate effectiveness, it may gain credibility.

Costantino and Merchant’s book on conflict managements systems provides a chapter on the evaluation of designed systems.⁷⁷ They state that evaluation is

⁷⁴ Sourdin, Tania, 2005, **Alternative Dispute Resolution, Second Edition**, Lawbook Co., Pyrmont NSW pp239–240

⁷⁵ Ibid, p247

⁷⁶ Sourdin, Tania, 2005, **Alternative Dispute Resolution, Second Edition**, Lawbook Co., Pyrmont NSW pp243

⁷⁷ Costantino, Cathy, et al., 1996, **Designing Conflict Management Systems**, Jossey Bass, San Francisco pp168–186

“the means by which the system clarifies its goals and measures progress toward and the achievement of those goals.”⁷⁸ They also state, “... we suggest that the evaluation process be created at the beginning of the conflict management design effort, not at the end.”⁷⁹

Costantino and Merchant’s systems design evaluation work has been extensively used by the United States Government in the development of its ADR programme. The senior government official responsible for the ADR programme wrote to the President of the United States saying:

I believe that ADR has the potential to transform significantly the way that Federal departments and agencies resolve disputes. We look forward to a continuing growth in the use of ADR and the establishment of new programs that can provide our citizens with a maximum amount of respect and a minimum amount of adversity. With your continued support, we look forward to a future where all government employees facing conflict will be able to act as peacemakers and problem-solvers.⁸⁰

The Federal ADR Program Manual states:

Part I draws heavily on the work of The Dispute Systems Design Work Group, sponsored and published by The Administrative Conference of the United States and on *Designing Conflict Management Systems*, by Cathy A. Costantino and Christina Sickles Merchant.⁸¹

While the federal ADR programme uses Costantino and Merchant as a primary source, the Administrative Conference of the United States also

⁷⁸ Ibid, p168

⁷⁹ Ibid, p169 See Chapter 3 for evaluation design

⁸⁰ Interagency Alternative Dispute Resolution Working Group, 2000, **Letter to the President of the United States**, <http://www.adr.gov/presi-report.htm> (accessed October 21, 2007)

⁸¹ Interagency Alternative Dispute Resolution Working Group, **Federal ADR Program Manager’s Resource Manual**, http://www.adr.gov/manual/Part1_Chap0.pdf (accessed September 20, 2007)

provided it with literature, especially in the area of evaluation. In 1995 the Conference contracted the Institute of Civil Justice at Rand Corporation:

... to prepare a manual and develop prototype data-collection instruments to assist those with responsibility for evaluating federal agency alternative dispute resolution programs. The manual discusses issues in designing evaluations, lays out approaches to data collection ample data analysis plans, and includes a number of prototype data collection instruments.⁸²

The manual provides information primarily on data collection and states that it is not “intended to be a comprehensive treatment of evaluation design and conduct ...”⁸³ Agencies that participate in the federal ADR programme have added to the literature, however, their work is also often based on Costantino and Merchant.⁸⁴

This dissertation has identified two systemic reviews of court based ADR processes. These ADR systems were introduced through court system, or legislative changes in the Province of Ontario and United States of America.

The former concerns a change to the Ontario Superior Court of Justice Rules which mandated mediation for non-family civil cases in the court, at two locations, over almost a two year period. At the end the two year test period,

⁸² Rolph, E., 1995 **Evaluating Agency Alternative Dispute Resolution Programs: A Users' Guide to Data Collection and Use**, Rand Corporation pv

⁸³ Ibid, p1

⁸⁴ See, for example: Scharf, Lee, **Evaluating ADR Programs**, http://www.iamed.org/pub_fedregister.cfm (accessed September 6, 2007); Dispute Systems Design Working Group, 1993, **Performance Indicators for ADR Program Evaluation**, Administrative Conference of the United States, Washington; Dispute Systems Design Working Group, 1995, **Evaluating ADR Programs**, Administrative Conference of the United States, Washington; and Cavanaugh, Susan, 2000, **An award-winning ADR program**, Public Manager, Summer Iss. 2; p27

the Ministry of Attorney General provided an evaluation report.⁸⁵ The report's key findings were that mandatory mediation:

- Significantly reduced the time taken to dispose of cases;
- Decreased costs to litigants;
- That a high proportion of cases were settled earlier in the litigation process, and that there were other benefits noted in those cases which did not settle; and
- That litigants and lawyers expressed satisfaction with the mediation process.⁸⁶

This analysis identifies four factors which may provide context for ombudsman evaluations. These include: time to close a complaint; cost savings to users; early disposition; and satisfaction; and these may be components of qualitative and quantitative ombudsman evaluations.

The latter study was conducted by the Rand Corporation concerning the *Civil Justice Reform Act*. The study produced a four volume, wide ranging report⁸⁷ on the implementation of alternative case management systems including ADR, in selected US Courts. Interestingly, the results of this study are almost

⁸⁵ See <http://www.attorneygeneral.jus.gov.on.ca/english/courts/manmed/> for information on mandatory mediation in Ontario.

⁸⁶ Hann, Robert G. et al, 2001, **Evaluation of the Ontario Mandatory Mediation Program (Rule 24.1)**, Queen's Printer, Toronto p2 Executive Summary

⁸⁷ see Kakalik, James S, et al 1997 **Just, Speedy, and Inexpensive?: An Evaluation of Judicial Case Management Under the Civil Justice Reform Act**, Rand Corporation, Santa Monica, MR-800-ICJ; Kakalik, J. S., et al, 1996, **Implementation of the Civil Justice Reform Act in Pilot and Comparison Districts**, Rand Corporation, Santa Monica, MR-801-ICJ; Kakalik, J. S., et al, 1996, **An Evaluation of Judicial case Management Under the Civil Justice Reform Act**, Rand Corporation, Santa Monica, MR-802-ICJ; Kakalik, J. S., et al, 1996, **An Evaluation of Mediation and Early Neutral Evaluation Under the Civil Justice Reform Act**, Rand Corporation, Santa Monica, MR-803-ICJ

diametrically opposed to those reported by Sourdin and the Ontario Attorney General.⁸⁸

The Rand Corporation reports that:

- The use of mediation and neutral evaluation has increased⁸⁹; but,
- No major effects of mandatory arbitration were detected⁹⁰;
- Voluntary ADR of any kind was not used extensively⁹¹;
- Detected no major effects of mediation or early neutral evaluation on time, costs, views of fairness, or attorney satisfaction⁹²; and
- The only statistically significant finding is that mediation programs appear to increase the likelihood of an economic settlement. Rand found that the “a plausible explanation (is)...the number of cases that settle rather than being dropped or decided by a judge.”⁹³

This dichotomy of results may be due to factors such as a jurisdiction’s governmental, judicial, political, or legal systems. It may well be that cross jurisdictional ombudsman evaluations will show similar disparate results. This is especially true when the evaluations are compounded by the mix of ombudsman practices (classical, executive or organizational).

⁸⁸ Likely due to the fact that the US court system does not necessarily assign costs to the losing side in a litigation, where Canadian courts do. Lawyers and litigants may be more likely to continue in litigation if there is no risk of being assigned costs if they are unsuccessful.

⁸⁹ Kakalik, James S, et al 1997 **Just, Speedy, and Inexpensive?: An Evaluation of Judicial Case Management Under the Civil Justice Reform Act**, Rand Corporation, Santa Monica, MR-800-ICJ p17

⁹⁰ Ibid p18

⁹¹ Ibid p18

⁹² Ibid p18

⁹³ Ibid p18-19

The Rand report was prepared in 1996, and well before the impacts of the Sarbanes – Oxley regime.⁹⁴ It is, therefore, difficult to draw any comparisons between this study and the present state of ADR in America as it relates to Ombudsman programs. It is likely that the Ontario experience more accurately reflects the current experience of complainants to Ombudsman schemes, especially in corporate environments.

In 2000, a Rand researcher wrote that:

...I think many ADR administrators and practitioners – and perhaps even some scholars – have turned away from empirical investigation and critical analysis of ADR consequences. Research on court ADR – particularly research with an evaluative component – has become unwelcome in some quarters. The critical reaction to Rand's evaluation of court ADR ... was a dramatic manifestation to this shift.⁹⁵

The same researcher, writing in 1995 stated that:

The increasing enthusiasm for implementing ADR in the court context has not gone unopposed. Scholars of civil procedure worry that a decline in the rate of adjudication of civil cases may restrict a court's ability to establish and maintain social norms and that an increasingly privatized justice system may disable less powerful litigants and the polity. Scholars, judges, and some legislators fear that mandating diversion of civil cases from trial to ADR procedures...will produce a two – tiered justice system, with first – class justice (a

⁹⁴ The Sarbanes-Oxley Act was signed into law on 30th July 2002, and introduced highly significant legislative changes to financial practice and corporate governance regulation. It introduced stringent new rules with the stated objective: "to protect investors by improving the accuracy and reliability of corporate disclosures made pursuant to the securities laws". The act is actually named after its main architects, Senator Paul Sarbanes and Representative Michael Oxley, and of course followed a series of very high profile scandals, such as Enron. It is also intended to "deter and punish corporate and accounting fraud and corruption, ensure justice for wrongdoers, and protect the interests of workers and shareholders" (Quote: President Bush Sarbanes-Oxley Act Forum, (date unknown) **Introduction to Sarbanes-Oxley**, <http://www.sarbanes-oxley-forum.com/> (accessed May 5, 2008)

⁹⁵ Hensler, Deborah, 2001, **ADR at the Crossroads**, Rand Corporation, Santa Monica

trial) reserved for the wealthy and powerful, and others relegated to a “second – class” system, such as court annexed arbitration.⁹⁶

When Ombudsman schemes have the power to create compensation, beyond redress of the damage done to the complainant, that scheme may be at risk of being considered a second tier system. Some financial services ombudsman schemes, including the United Kingdom and Irish Financial Ombudsman schemes have that power.

In contrast, Caplicki states that “There is much to be said for mediation and arbitration to the extent that the process can help bring about a resolution without forcing the parties into court.”⁹⁷

Further, Fiadjoe, writing about the experience of court based ADR in the Caribbean region states:

One of the issues that was raised earlier about the introduction of ADR into the legal system had to do with the fear that jurisprudence, reliant as it is on judicial precedent, would suffer from ADR. The St. Lucian pilot project has provided credible evidence to dispel that fear...This means that, happily, the jurisprudence will not suffer and the development of precedent will not be handicapped in any significant way.⁹⁸

Shack, after reviewing 62 court based ADR studies, comments on these divergent views of the effectiveness of court based ADR in stating:

⁹⁶ Hensler, Deborah, 1995, **A Glass Half Full, A Glass Half Empty: The Use of Alternative Dispute Resolution in Mass Personal Injury**, Texas Law Review 73 – 1587 para 12

⁹⁷ Caplicki III, Edmund, 2004, **What Management Needs To Know About Mediation And Arbitration**, Construction Accounting & Taxation, 14(4), 5-14. (Accessed October 22, 2007, from ABI/INFORM Global database. (Document ID: 676909971)

⁹⁸ Fiadjoe, Albert, 2004, **Alternative Dispute Resolution: A Developing World Perspective**, Routledge Cavendish p136

The studies portray programs of varied structures and processes, and with cases that differ from one to the next. And, logically, these studies come to different conclusions. Some find that mediation does save time, reduce costs, and increase satisfaction, while others find that it does not, and still others find that it has a negative effect on time and money.

These results do not provide an answer to the usual question of what the impact of mediation is on time, cost, and satisfaction, but point instead to the importance of variances in program, case, and process characteristics in determining the effectiveness of mediation....Knowing this can assist in broadening the positive effects of mediation by allowing courts and lawyers to make more informed decisions about how to structure programs.⁹⁹

This point is critically important when considering evaluation systems for Ombudsman operations, and reaffirms the contrast between the Ontario and Rand studies. Ombudsman offices are not a generic entity. They may be governmental or classical, executive, or organizational in nature. Their establishment may reflect differing legal, social, corporate, economic, political, or governmental regimes. Understanding the differences between the complexities of Ombudsman operations in the development of an evaluation framework is therefore relevant and important.

Mackie states that “The advantages of mediation over adjudication follow those articulated in general for the ADR movement...as set against the inherently win – lose, adversarial, rule – based judgments of the adjudicative processes.”¹⁰⁰ Mackie lists eighteen assumptions which support the use of mediation centres in court based ADR:

- 1) Mediation deals with the roots of problems;

⁹⁹ Shack, Jennifer, 2003, **Mediation Can Bring Gains, But Under What Conditions?**, Dispute Resolution Magazine, Vol 9 no 2, American Bar Association p11

¹⁰⁰ Mackie, Karl, 1991, **A Handbook of Dispute Resolution: ADR in Action**, Routledge, UK p90

- 2) Mediation improves disputants' communicative capacities;
- 3) Mediators act as friends, not as strangers to the parties;
- 4) Mediation is non – coercive;
- 5) Mediation is voluntaristic;
- 6) Mediation centres provide easier access to the legal system;
- 7) Disputants prefer it to the courts;
- 8) There is such a thing as a sense of community influencing the dynamics of disputes,
and;
- 9) Unlike judges, mediators represent the community and share its values;
- 10) Mediation reduces tension in the community;
- 11) Mediators are not professionalized and do not require long periods of training;
- 12) Mediation centres are non – bureaucratic;
- 13) Mediation is able to deal with a wide range of disputes;
- 14) Mediation is speedier;
- 15) Mediation is less costly;
- 16) Mediation is fairer;
- 17) Mediation can reduce court congestion and delay;
- 18) Mediation is more effective in preventing recidivism.¹⁰¹

Some of Mackie's assumptions may be applicable to Ombudsman operations, in some circumstances. For example, the sense of community may change drastically between being very local (i.e. the Ombudsman for a municipality or

¹⁰¹ Mackie, Karl, 1991, **A Handbook of Dispute Resolution: ADR in Action**, Routledge, UK p91

school) to very international (ICANN Ombudsman). Identifying pertinent questions from Mackie's list may assist Ombudsman practitioners in considering relevant evaluation questions or performance indicators in the development of their own Results Based Management Accountability Framework.¹⁰²

The Government of Singapore has instituted court based dispute resolution as part of reforms to its judicial processes. When discussing the evaluation of these reforms Malik states:

Measuring performance using qualitative and quantitative benchmarks and indicators is difficult in the private sector. It is even more difficult in the judicial system, where the product is difficult to define and the culture of maintaining the status quo (arguably for preserving independence) hampers attempts to monitor performance.

...Development of performance indicators and benchmarks and the mechanism to undertake monitoring and evaluation reviews requires commitment at the top, the cooperation of those persons operating the system, and the institutional capacity to produce timely and accurate information.¹⁰³

Malik's comments may be considered appropriate for ombudsman operations. His comment on the preservation of independence is as a limiting factor for evaluations is reflected in other literature sources elsewhere in this dissertation (see Chapter 2,2 for a discussion on Ayeni and Aufrecht et al).

O'Leary, writing about alternative conflict resolution as it is applied to environmental issues (environmental conflict resolution – ECR) postulates

¹⁰² See Chapter 3.

¹⁰³ Waleed, Haider Malik, 2007, **Judiciary-Led Reforms in Singapore: Framework, Strategies, and Lessons** (World Bank Technical Paper), World Bank Publications p52

that ECR evaluations must look at outcome analysis to support the use of ECR:

Unlike small claims cases, they are often sui generis. However, it might be possible to examine them for patterns in the proportion of improvement in various scientific indicators over time. By what percent does a given contaminant decline in the water or soil? By what proportion of the ultimate goal does the environment improve or a species population recover? Are these proportions similar over a given period of time for cases where ECR is and is not used?¹⁰⁴

Ombudsman schemes generally would not use long term outcome analysis as an evaluation tool. However, most ombudsman schemes do use trend analysis as a tool, and this analysis (i.e. frequent – repetitive complaints about this same issue or entity) may serve to determine if systemic reviews are warranted.

Ashton speculates that ADR should be evaluated simply in terms of a cost benefit analysis:

Whichever method of dispute resolution is being pursued, the company should continue to evaluate the commercial costs and benefits of alternative methods and be open to a change in strategy if business evaluation techniques suggest this is appropriate.¹⁰⁵

Ashton is using a basic return on investment (ROI) analysis. Sourdin has made a similar ROI analysis (Chapter 2.6). Similar ROI analysis

¹⁰⁴ O'Leary, Rosemary; et al., 2005, **Assessing and Improving Conflict Resolution in Multiparty Environmental Negotiations** International Journal of Organisation Theory and Behavior; Summer Vol 8, 2; p203

¹⁰⁵ Ashton, David, et al., **Treating disputes as business decisions**, [International Commercial Litigation](#), London: November 1995. p22 (accessed October 21, 2007, from ABI/INFORM Global database. (Document ID: 9343954))

techniques have been identified the body of ADR evaluation research, and this is reported on in this dissertation.¹⁰⁶

Much of the reviewed ADR based research recommends the design and development of evaluation tools and strategies early in the development of the dispute resolution scheme. This dissertation recommends the use of the Results Based Management Accountability Framework (RMAF) and provides guidance of the use of the RMAF for Ombudsman practitioners.¹⁰⁷ If ROI analysis is to be a component of the evaluation blueprint, this needs to be identified early on, and properly strategized.

The ADR literature recommends the use of surveys and questionnaires. This dissertation provides information, analysis and discussion on a system users survey used by the test case entity, and in development of the evaluation blueprint.

Much of the ADR literature, especially with respect to the United States Government's ADR programs has an explicit objective of using ADR techniques to reduce acrimony and costs. It also has the latent objective of creating empowerment for the protagonists to become problem solvers.¹⁰⁸ These are similar rationale for the establishment of Ombudsman programs, and the ability to quantify or gauge the degree of attainment of these objectives is a key question for Ombudsman practitioners.

¹⁰⁶ See Chapter 8.2.9 for an ROI analysis relating to complaints diverted away from formal adjudication. See Chapter 9.2.4 for a discussion on cost effectiveness as a component of the Results Based Management Accountability Framework.

¹⁰⁷ See Chapter 3 for a discussion of the RMAF

¹⁰⁸ Supra Interagency Alternative Dispute Resolution Working Group, 2000, **Letter to the President of the United States**, <http://www.adr.gov/presi-report.htm> (Accessed October 21, 2007)

There is a strong correlation between the ADR evaluation research and this dissertation in the consideration of a costs benefit analysis.¹⁰⁹ This dissertation considers an evaluation question and performance indicators concerning cost effectiveness.¹¹⁰ Some cost benefit considerations may be deduced by empirical research. For example, United States law (Sarbanes –Oxley Act) sentencing guidelines indicate that a corporation fined under the law and which did not have an ombudsman scheme would receive a higher penalty than one with such a program. However, it is likely impossible to calculate the reputational value added to an entity that voluntarily initiates an Ombudsman program. In reverse calculation, it would be difficult to calculate the loss to a corporation’s reputational value by canceling an Ombudsman program.

2.7 Evaluation Literature Generally

There is a wealth of information concerning the general application of evaluation as a research field. The Proquest Research Database lists over 300,000 documents dealing with evaluation. This research considers the wider literature with two methodologies. First, in a review of the literature that generally applies to subject matter of this dissertation, and second, in the review of literature that pertains to specific issues addressed in the development and design of ombudsman evaluation tools.¹¹¹ The latter is

¹⁰⁹ Supra Ashton, David, et al, **Treating disputes as business decisions**, [International Commercial Litigation](#), London: November 1995. pg. 22 (accessed October 21, 2007, from ABI/INFORM Global database. (Document ID: 9343954))

¹¹⁰ See Chapter 3 and Appendix 2

¹¹¹ i.e., the application of Centre of Excellence for Evaluation, Results-based Management Directorate, 2005, **Preparing and Using Results-based Management and Accountability Frameworks** at Chapter 3.1

applied in Chapter Three on evaluation planning and Chapter Four on the use of generic standards.

Two works in the general literature are relevant. Robson provides a helpful definition of evaluation when he writes that evaluation is "...assessing the value (or worth, or merit) of something. The 'something' focused on here is some kind of innovation, or intervention, or project, or service."¹¹² Robson's work is dedicated to *Small Scale Evaluations*. Robson states that small scale implies that evaluations involve:

- Local concerns;
- Single evaluators or a small team of two or three evaluators;
- Short timescales;
- Can be accomplished on limited resources; or
- Are conducted at a single or limited number of related sites.¹¹³

Relevant for ombudsman practitioners, Robson further defines action-based research by defining the concept of practitioner-centered action research. The concept of action based research is also introduced in Chapter 1.5.1. Robson states that:

Traditional action research has the researcher or evaluator in charge of the study, although it is common to have support and assistance from practitioners ...

Practitioner-centered action research puts practitioners in charge of all aspects. The

¹¹² Robson, Colin, 2000, **Small-Scale Evaluation: Principles and Practice**, Sage Publications p8

¹¹³ Ibid, p3

role of the researcher or evaluator is as a consultant, and not as a controlling superior.¹¹⁴

Robson also provides the practitioner evaluator with workable information on running small scale evaluations.¹¹⁵ He further provides information on formative and summative evaluations,¹¹⁶ and this topic is reported on elsewhere in this dissertation.¹¹⁷

George has written on the experience of mapping formative evaluations for grade school curriculums in the United Kingdom.¹¹⁸ While the subject matter of these evaluations is different from ombudsman reviews, the processes and methodologies outlined by George are instructive in the ombudsman context.

One of the leading textbooks on evaluation indicates that evaluation:

... provides processes and tools that agencies of all kinds can apply to obtain valid, reliable, and credible data to address a variety of questions about the performance of public and nonprofit programs. Program evaluation is the systemic assessment of program results and, to the extent feasible, systematic assessment of the extent to which the program caused the results. Evaluation includes ongoing monitoring of programs, as well as one-shot studies of program processes or program impact.¹¹⁹

For Ombudsman practitioners these are relevant issues. The approach to evaluating Ombudsman operations needs to be pre-planned and systemic in nature. Evaluation questions, performance criteria, and the timing of evaluations should be explored on a systemic basis in order for the

¹¹⁴ Robson, Colin, 2000, **Small-Scale Evaluation: Principles and Practice**, Sage Publications p21

¹¹⁵ See Robson, Colin, 2000, **Small-Scale Evaluation: Principles and Practice**, Sage Publications Chapters 1-6

¹¹⁶ Ibid p50

¹¹⁷ Chapters 3 and 10

¹¹⁸ George, Judith et al., 1999, **Handbook of Techniques for Formative Evaluation**, Falmer, UK

¹¹⁹ Wholey, Joseph, **Handbook of Practical Program Evaluation**, Jossey Bass, San Francisco, 2004, pxxxiii

Ombudsman to allocate financial, human, and research resources for the evaluations. Chapter 3 of this dissertation provides information on planning evaluations.

Wholey also states that:

Program improvement is the ultimate goal for most evaluators. Consequently, they should use their skills to produce useful, convincing evidence to support their recommendations ...¹²⁰

This is a key point for ombudsman evaluations. This dissertation is devoted to developing an evaluation blueprint to equip ombudsman with tools to help them develop useful convincing evidence about their operations.

2.8 Identifying, Reviewing and Analyzing the Literature

This chapter reports on a review of literature in the field in an attempt to find documents that can provide information on criteria, standards, and emphasis regarding the operation of an ombudsman office. The research revealed that no documentation specific for these purposes exists.

A small number of practitioner-based documents have been identified. The three seminal works, which were relied on during the course of this evaluation, are:

- Standards for the Establishment and Operation of Ombuds Offices, by the American Bar Association (ABA)¹²¹;

¹²⁰ Ibid, pxiii; See Chapter 3.1.4 and Appendix 11 “Reporting Strategy” for a discussion of reporting evidence and findings in ombudsman evaluation processes.

¹²¹ American Bar Association, 2004, **Standards for the Establishment and Operation of Ombuds Offices**, <http://www.abanet.org/adminlaw/ombuds/115.pdf> (accessed October 30, 2006)

- Essential Characteristics of a Classical Ombudsman, published by the United States Ombudsman Association (USOA)¹²²; and
- Creating the Office of the Ombudsman¹²³, by Rick Russell, a solicitor, ombuds, and alternative dispute resolution practitioner.

The research also considered two works by Dr. Mary Rowe, the Ombudsman at the Massachusetts Institute of Technology, and a booklet produced by the Canadian Forces Ombudsman called “Demonstrating Your Value”¹²⁴. The latter deals principally with case outcomes rather than process and structure; and the former is basically a set of fact sheets that enable the reader to develop critical questions about evaluation.

There is also a paper by Dr. John Barkat, Ombudsman at Pace University; however, it deals primarily with the design of an internal ombuds programme. Barkat looks at best practices through the process of identifying a number of common mistakes that denigrate best practices, as opposed to identifying the best practices. Barkat identifies program weaknesses including issues such as: the ombudsman position is not professionalized; the ombudsman does not report to the top of the organization; the office is not adequately funded or staffed; and the lack of independent counsel for ombudsman consultation.¹²⁵ Barkat notes that there are “Three Foundational Cornerstones: Neutrality,

¹²² United States Ombudsman Association, 2006, **History of the Public Sector Ombudsman**, http://usoa.non-profitsites.biz/en/About_Us/history.cfm (accessed October 15, 2006)

¹²³ Russell, Rick, (date unknown) **Creating the Office of the Ombudsman**, <http://www.agreeinc.com/ombudsman.html> (accessed January 27, 2007)

¹²⁴ National Defence and Canadian Forces Ombudsman, 2003, **Demonstrating Your Value**, Ottawa (Brochure)

¹²⁵ Barkat, Dr. John, 2002, **Blueprint for Success: How to Effectively Design an Organisational Ombuds Department** (paper) pp7–12

Confidentiality, and Independence.”¹²⁶ These are consistent themes found throughout the other literature.

All of this leads the research to the conclusion, that there is a void in the literature in the field of ombudsman evaluation.

2.9 Summary

This dissertation points out that the volume of literature applicable to ombudsman evaluation is limited. There have been very few theoretical or applied studies which document ombudsman evaluation. There have been a larger number of practitioner-based reports, but these are of limited use as the content and context of the reporting is specific to the institution evaluated.

Internationally accepted criteria, such as are found in the ISO standards, may be helpful in looking at baseline evaluations of ombudsman activities.

The literature, when taken as whole, does provide some information which aids in the development of an evaluation blueprint. Themes which can inform the ombudsman evaluation process include:

- the consideration of an evaluation blueprint in the design, or early in the development of an ombudsman operation;
- the development of metrics which measure the time needed to close complaints (quantitative), cost effectiveness or return on investment (quantitative and/or qualitative), and satisfaction (qualitative);
- the consideration of jurisdictional (type of legal, political, judicial etc. systems), and process factors (type of ombudsman – classical,

¹²⁶ Barkat, Dr. John, 2002, Blueprint for Success: How to Effectively Design an Organisational Ombuds Department (paper) p3

executive or organizational); that, with few exceptions, ombudsmen will find little information on how to conduct an evaluation of their operations.

Chapter Three

Developing an Evaluation Plan

3.1 Introduction

An RMAF¹²⁷ provides Program Managers with a concise statement or road map to plan, monitor, evaluate and report on the results throughout the lifecycle of a program, policy or initiative.¹²⁸

Chapters Three through Eight explore the development of a blueprint for evaluation by documenting the recent experiences of the ICANN Office of the Ombudsman and its evaluation activities. The ICANN Office of the Ombudsman is the ombudsman used as the test agency for this blueprint. This blueprint is developed through the distillation of the ICANN Office of the Ombudsman evaluations experiences into a Practitioner's Guide for the Evaluation of Ombudsman Offices, which is found at Appendix 11.

The literature review revealed the lack of documented evaluation material in respect of ombudsman operations. The literature review implies some reasons for that gap:

- boundaries of independence; that there may be a perception that an ombudsman's independence may be challenged or fettered by an external review;

¹²⁷ Results-based Management Accountability Framework

¹²⁸ Centre of Excellence for Evaluation, Results-based Management Directorate, 2005, **Preparing and Using Results-based Management and Accountability Frameworks**, Treasury Board of Canada http://www.tbs-sct.gc.ca/eval/pubs/RMAF-CGRR/guide/guide_e.pdf (accessed January 20, 2005) p4

- the nature of evaluating fairness, a concept which have different meaning, values, and interpretations in varying jurisdictions or different ombudsman schemes; and
- that ombudsmen do not typically rely on performance plans, but rather on complaints to determine caseload volume and intensity. This reactive operational approach makes evaluation more difficult than in traditional results or performance based organizations.

Despite these barriers, this dissertation suggests that it is possible to develop an evaluation plan for ombudsmen. Relevant material includes research and documentation from Canada's Treasury Board Secretariat (TBS), Centre of Excellence for Evaluation for mapping structures in developing the first results-based management accountability framework applied to an ombudsman program¹²⁹. The Government of Canada has invested considerable effort in developing RMAF tools for its many departments and agencies, and the researcher has previously applied these tools within a Canadian Government Agency.

This chapter uses generic RMAF principles and applies them to an ombudsman's office. The RMAF assists an entity to develop a long-term evaluation strategy. By applying these principles and developing a road map for evaluation, the ombudsman may consider evaluation on an ongoing mid-term and long term basis. The advantage of establishing an RMAF process for an ombudsman entity is that it allows the ombudsman and ICANN community stakeholders to have meaningful and relevant evaluation criteria in

¹²⁹ ICANN Office of the Ombudsman, 2005, **Results-based Management Accountability Framework**, <http://www.icann.org/ombudsman/documents/rmaf-08feb05.pdf> (accessed January 28, 2007)

mind for several years, as opposed to ad hoc, unplanned, or unfocused evaluations.

The review schedule and principles found in the RMAF can also be applied to new or existing ombudsman operations. Existing ombudsman operations may have to consider where they are in terms of age and development of the office and then apply mid-term or formative evaluation, or final or summative evaluation criteria.

An RMAF or evaluation plan involves a multipronged, multifaceted approach that reflects the complexity of ombudsman activities. The plan should include evaluation options from various information holders such as the wider community, clients and complainants, the organisation or state, the media, and internal stakeholders. A multifaceted approach means that the information is not gathered in one manner; some evaluations may include a quantitative analysis, and others qualitative. A strong multifaceted review would include a number of measurement tools such as interviews, surveys, application of ISO standards, economic impacts, and systems improvements, as well as media monitoring.

With a more inclusive mix of stakeholders and a broad set of indicators and tools involved in the evaluation process, the ombudsman or its organisation can gain more accurate insights into performance, activities, and perceptions.

3.2 Results-based Management Accountability Framework (RMAF)

The RMAF is a document created by an entity or its stakeholders to provide a long-term plan for evaluating the entity. The RMAF identifies evaluation

questions and performance indicators on an ongoing, formative, or summative basis. Creating these questions and determining criteria that can be demonstrated by performance milestones adds objectivity, credibility, and clarity to the evaluation process. An entity which uses an RMAF may collect data that relates to the performance indicators over a period of time, and this provides for an economical and standardized evaluation process.

This research is not dedicated to the analysis of RMAFs generally, but rather with the application of an RMAF model for use as a tool in the ombudsman evaluation process. TBS documents¹³⁰, for example, provide readily accessible documentation on the preparation of the RMAF. This research applies that framework in practice.

The RMAF contains several sections, the most critical being the development of the basic evaluation questions and the criteria which they generate. The RMAF is divided into four principal areas:

- A profile of the office
- A logic model
- An evaluation strategy
- A reporting strategy

The RMAF created for the ICANN Office of the Ombudsman attempted to develop a predictive framework for the evaluation of an ombudsman office on a continuing formative and summative basis. Elements and criteria are monitored and reported on an ongoing basis in the Ombudsman's Annual

¹³⁰ Centre of Excellence for Evaluation, Results-based Management Directorate, 2005, **Preparing and Using Results-based Management and Accountability Frameworks**, Treasury Board of Canada http://www.tbs-sct.gc.ca/eval/pubs/RMAF-CGRR/guide/guide_e.pdf (accessed January 20, 2005)

Report. A formative (or mid-term) evaluation of the ICANN Ombudsman is foreseen in 2007–2008, or two to three years into operation. A summative (or final) evaluation is scheduled in 2009–2010, or four to five years into operation. The ICANN Office of the Ombudsman RMAF is attached as Appendix 2.

3.2.1 Ombudsman Office Profile

The profile is a narrative which provides definition and context for the existence and function of the office of the ombudsman. It should contain several components, described in the following paragraphs, that give the reader a concise portrait of the operations.

3.2.1.1 Origin and Rationale

The questions of when and why the office of the ombudsman was, or will be, instituted should be addressed. Precipitating events such as compliance with a court ruling, public concerns, democratic initiatives, and other factors should be noted.

3.2.1.2 Mandate and Objective

The two questions of where the ombudsman's mandate is established (statute, policy, bylaw, collective agreement, and the like) and what the mandate is (internal, external, or executive) should be addressed.

3.2.1.3 Governance Structure

This section should describe the linkage between the office of the ombudsman and the entity it oversees. It should describe the communication and reporting links between the ombudsman and the entity. If the office of the

ombudsman is larger than a sole practitioner, then the RMAF should describe that structure. In both cases the use of organigrammes may be useful.

This section may also describe the relationship, in terms of membership or accreditation, with professional bodies such as the USOA, the International Ombudsman Association (IOA), and the Forum of Canadian Ombudsman (FCO).

3.2.1.4 Clients

The RMAF should concisely consider the eventual users of the ombudsman's services. This may include demographic information or broad descriptions of classes of users. A goal in identifying the client base is to eventually be able to determine any issues that limit access or that may influence outreach programmes.

3.2.1.5 Delivery Approach

The RMAF should provide indications of how the programme will be delivered and how the ombudsman will engage the client group. This can vary based on the mandate of the ombudsman and the entity it oversees. An organisational ombudsman in a single local firm may rely on face-to-face delivery. On the other hand, Canada's newly created Federal Victims of Crime Ombudsman may use a number of delivery mechanisms owing to geography, mandate, and varying degrees of client literacy.

3.2.1.6 Final Outcomes and Planned Results

This section of the RMAF should provide a linkage between the activity of entity overseen or served by the ombudsman and the outcomes provided by the ombudsman. Statements such as, "Ultimately, ICANN is working towards

a stable, secure, and universal Internet. In working towards that goal, the Office of the Ombudsman will assist ICANN by ...”¹³¹ assist in this definition. The simple activity of creating this linkage may by itself assist ombudsman in the evaluation process. Ombudsmen may also develop self-evaluation questions such as “Does our operation assist in creating a good workplace that produces an economical and useful product? Does our operation assist in the proliferation of democracy and the protection of rights?”

3.2.2 Logic Model

Logic Model – (also referred to as results-based logic model). An illustration of the results chain or how the activities of a policy, program or initiative are expected to lead to the achievement of the final outcomes. Usually displayed as a flow chart.¹³²

The logic model is a key component of the RMAF. It is a graphic representation of the overall functions of the entity it describes, as can be seen in Figure 3.1. The exercise of developing a logic model assists the office of the ombudsman to clarify its role and function in the government, agency, or organisation it serves, and ties ombudsman activities to the overall functioning of the entity. It consists of a flow chart that highlights the following: ombudsman objectives, key functions, activities, outputs, immediate outcomes, intermediate outcomes, and final outcomes.¹³³ These components may be determined by a review of the office’s mandate, supporting structural documents, or by self-reflection. It is important that the final outcomes reflect

¹³¹ ICANN Office of the Ombudsman, 2005, **Results-based Management Accountability Framework**, <http://www.icann.org/ombudsman/documents/rmaf-08feb05.pdf> (accessed January 28, 2007) p4

¹³² Treasury Board Secretariat, 2001, **Guide for the Development of Results-based Management and Accountability Frameworks** http://www.tbs-sct.gc.ca/eval/pubs/RMAF-CGRR/RMAF_Guide_e.pdf (accessed February 23, 2007) p34

¹³³ ICANN Office of the Ombudsman, 2005, **Results-based Management Accountability Framework**, <http://www.icann.org/ombudsman/documents/rmaf-08feb05.pdf> (accessed January 28, 2007) p7

those discussed in the previous section. The logic model is a graphic, and it is important to keep statements concise to avoid overwhelming the activity. Again, simply developing these statements in the logic model may provide a basis for an evaluative conclusion.

Office of the Ombudsman

Logic Model

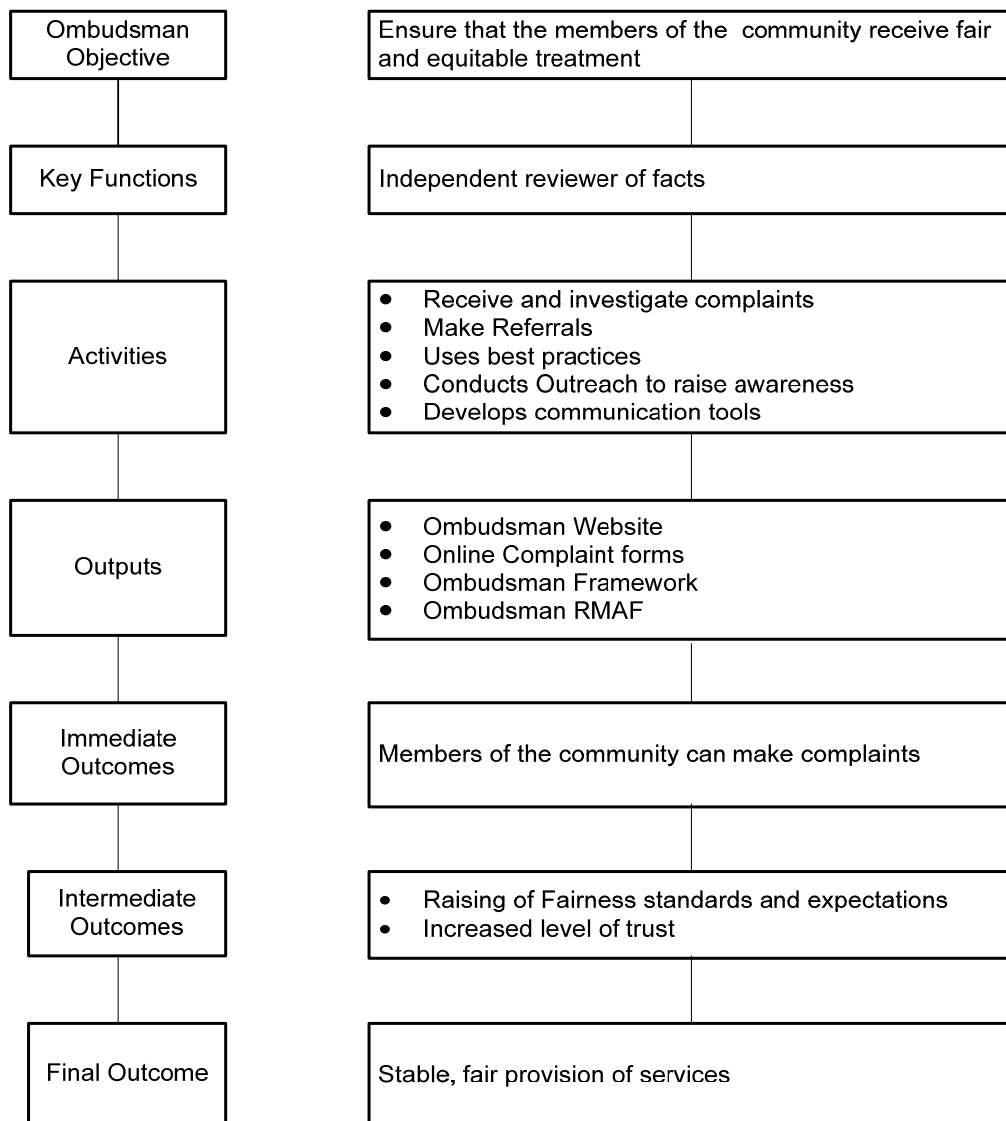


Figure 3.1 – Sample Ombudsman Logic Model

3.3 Evaluation Strategy

An evaluation strategy identifies a series of questions and subquestions that help determine whether an office of the ombudsman is successful, the types of indicators used to measure success, and data requirements to support the indicators. The evaluation strategy supports the logic model, and like the latter, is a living document; if the logic model changes, so too must the evaluation strategy.¹³⁴

The evaluation strategy highlights any factors that affect the office or the evaluation. These may include issues such as staffing shortages, database issues, or known gaps between client expectation–ombuds outcome and satisfaction levels. The evaluation should also consider the availability of data and data sources relevant to the criteria, and the cost of conducting evaluations on a one-off or continuing basis. An evaluation strategy must consider all these factors so that any evaluation that takes place is grounded in the economic and practical realities and capabilities of the office and the organisation it serves.

3.3.1 Evaluation Questions

As shown in Figure 3.2, the ICANN Office of the Ombudsman RMAF includes seven broad evaluation questions with 15 performance indicators in four topic areas: relevance; management; programme delivery; and cost effectiveness.¹³⁵

¹³⁴ ICANN Office of the Ombudsman, 2005, **Results-based Management Accountability Framework**, <http://www.icann.org/ombudsman/documents/rmaf-08feb05.pdf> (accessed January 28, 2007) p11

¹³⁵ ICANN Office of the Ombudsman, 2005, **Results-based Management Accountability Framework**, <http://www.icann.org/ombudsman/documents/rmaf-08feb05.pdf> (accessed January 28, 2007) pp13–14

Relevance	Performance Indicators
Is there an ongoing need for the office of the ombudsman?	# of people using ombudsman services (call centre, website, complaint form, etc.) # and type of complaints # and type of resolutions
	# and type of media mentions that focus on the office of the ombudsman
	% of complainants/community who agree there is a need for the ombudsman
	% of complainants/community who know of an alternative to resolving a complaint if ombudsman did not exist
Management	Performance Indicators
Are the office of the ombudsman resources sufficient to carry out its mandate?	Activities and outputs completed as planned
	Perception that ombuds has sufficient resources
	Inventory and backlog of ombuds files
Programme Delivery	Performance Indicators
To what extent has the ombudsman established effective working relationships?	With staff, Board, supporting agencies, registries, registrars, and the ICANN community in general
Are ICANN staff and Board dealing with identified issues in a timely manner?	# of cases requiring staff or board intervention, age of dispute to resolution by ICANN
Has there been a change in behaviour on the part of ICANN or a complainant to avoid litigation?	# of cases resolved by Ombudsman which could have gone to litigation % of complainants who would use the ombudsman again
Cost effectiveness	Performance Indicators
Has the ombudsman been cost effective in delivering the programme?	Savings as a result of bulk airfare purchases, prudent purchasing of equipment, etc Cost per file? Productivity Actual or potential improvements, efficiencies, or cost savings in ICANN programme delivery or administration
Are there cost-effective alternatives?	Are there other models of executive ombudsman that ICANN could employ?

Figure 3-2 – ICANN Ombudsman Evaluation Questions and Performance Indicators

The nature and complexity of ombudsman operations will impact all portions of the evaluation questions and performance criteria. A small internal/organisational ombuds programme with a limited number of clients

may well have a very different set of questions and criteria than a classical ombudsman at the state or national level.

These evaluation questions and criteria are included in a chart or graphic and correlated with the source of the data to analyze the criteria, the stakeholder who can provide the information of the criteria, and timing of the data with the ongoing, formative or summative evaluations. The use of tables or graphics makes clear the commitments, roles, and responsibilities of participants in the evaluation process.

3.4 Reporting Strategy

The reporting strategy is a vital component of the RMAF. There may be multiple stakeholders who have an interest in all or some portion of the evaluation of an ombudsman's office. It is therefore important to develop a reporting or communications strategy which determines who is to receive evaluation reports, when they are provided, and for what purpose. Reporting may be through press releases, annual reports, web postings, blog postings, workshops, brochures, or other publications. Bear in mind that because evaluation may be used to consider retaining incumbents, readjustment of budgets or staffing levels, or identifying performance or systems strengths and weaknesses, a reporting strategy is critical. As it is a regular and usual ombudsman function to provide an annual report to the entity it oversees, this becomes a natural vehicle to also report on evaluation initiatives. Formative or mid-term evaluations are normally conducted and reported on in the second to third year of operation, while final or summative evaluations are conducted and reported on in year five.

3.5 Summary

An evaluation plan is not a strict blueprint for an evaluation process. One cannot reasonably predict five years out from a summative evaluation the economic, political, or social impacts which may drive a business, government, or entity, and thus the relevant questions to determine success. However, having a plan in mind and some basic understanding of the broad categories which can be looked at to gauge success is important. The RMAF tool enables ombudsmen to explore and develop the initial evaluation concept. The RMAF for ombudsman operations designed and developed in Chapter 3 is an important tool in the development of the evaluation blueprint, and it has been tested against the ICANN Office of the Ombudsman with success.

Arguably, the earlier an RMAF is created in the development or institutionalization of the office of the ombudsman, the greater the clarity, relevance, and acceptance of the evaluations that take place. The RMAF and its constituent parts provide a template or road map for practitioners to develop a long-range evaluation plan. The RMAF is not an ad hoc tool, but may be used according to the resources and profile of the office creating it.

Chapter Four

Using Generic Standards

4.1 Introduction

This chapter will document the use of international standards by the dissertation's test case, the ICANN Office of the Ombudsman; and then apply the use of those generic standards to the evaluation blueprint proposed by this research. The contemplation of international standards, based on complaint handling systems rather than types of Ombudsman operations, allows Ombudsman Offices to extract those standards which are relevant for their form of practice.

The International Organisation for Standardization (ISO) is a network of national standards institutes in 157 countries. The ISO develops international technical standards for industry, businesses, and governmental bodies. These international standards are adopted as the national standards bodies of the member states; i.e., American Standards Association (ASA) or Standards Australia to provide for the continuity of standards in manufacturing and other industries at a local level.¹³⁶

The ISO has developed two international standards that are relevant to ombudsman operations:

- ISO 10002 *Quality management – Customer satisfaction – Guidelines for complaints handling in organisations*; and

¹³⁶ International Organisation for Standardization, **Overview of the ISO System**, <http://www.iso.org/iso/en/aboutiso/introduction/index.html#two> (accessed March 25, 2007)

- ISO 10003 *Quality management – Customer satisfaction – Guidelines for dispute resolution external to organisations.*¹³⁷

This chapter considers the use of these generic standards complaint-handling standards as tools in evaluating the development and establishment of ombudsman operations. This chapter also attempts to determine whether there is value in these generic standards for a specific purpose. This will be accomplished by an application of the standards to the actual operations of the ICANN Office of the Ombudsman.

4.2 ISO 10002

ISO 10002, *Quality management – Customer satisfaction – Guidelines for complaints handling in organisations*, was promulgated as an international standard in July 2004. This standard provides guidance for the design and implementation of an effective and efficient complaint-handling process for all types of commercial and noncommercial activities, including those related to electronic commerce.¹³⁸

The standard contains a number of key requirements for complaint-handling authorities, who must:

- Provide a complainant access to an open and responsive complaint-handling process;
- Enhance the ability of the organisation to resolve complaints in a consistent, systematic, and responsive manner, to the satisfaction of the complainant and the organisation,

¹³⁷ Both standards are available for purchase through the ISO website:

<http://www.iso.org/iso/en/CatalogueListPage.CatalogueList>

¹³⁸ International Organisation for Standardization, 2004, *Quality management – Customer satisfaction – Guidelines for complaints handling in organisations*, Standard ISO 10002, Geneva pvi

- Enhance the ability of an organisation to identify trends and eliminate causes of complaints and improve the organisation's operations,
- Help an organisation create a customer-focused approach to resolving complaints, and encourage personnel to improve their skills in working with customers, and
- Provide a basis for continual review and analysis of the complaint-handling process, the resolution of complaints, and any process improvements made.¹³⁹

The standard is the first attempt by a recognised international organisation to develop comprehensive yet generic standards as a bullet form or checklist.

The standards are meant to be applied to any organisation that receives complaints from the public, from the corner grocer to international organisations. Thus the generic nature of the standard may, at times, appear to be somewhat imprecise and vague. For example, in consideration of an evaluation process, Standard 8.3 simply states, "There should be regular action taken to determine the levels of satisfaction of complainants with the complaint handling process. This may take the form of random surveys of complainants and other techniques."¹⁴⁰

This standard contains a number of helpful appendices, with model definitions, flowcharts, and complaint forms. ISO 10002 is essentially a road map for the handling of complaints internal to an organisation. As such, it has usefulness for both organisational and executive ombudsman programmes.

¹³⁹ International Organisation for Standardization, 2004, **Quality management – Customer satisfaction – Guidelines for complaints handling in organisations, Standard ISO 10002**, Geneva

pvi
¹⁴⁰ Ibid, p8

4.3 ISO 10003

ISO 10003, *Quality management – Customer satisfaction – Guidelines for dispute resolution external to organisations*, differs from ISO 10002 on two levels. First, at the time of writing, it was a draft standard, still in the process of being agreed to and adopted by the member standards bodies. ISO 10002 is an adopted standard. Second, ISO 10003 provides guidance for the handling of complaints when they are not resolved internally. This standard has the following goals:

- Provide flexible dispute resolution that, in comparison with court-based processes, are less expensive, easier, and quicker, especially in disputes across borders;
- Help enhance customer satisfaction and loyalty;
- Provide a benchmark against which individuals and organisations can evaluate claims by organisations and providers that they operate in an effective, efficient, and fair manner;
- Help inform potential users of dispute resolution about the conditions of access, cost, and the legal consequences;
- Enhance the ability of an organisation to identify and eliminate causes of disputes;
- Improve the way complaints and disputes are handled in the organisation;
- Provide additional information that can contribute to improvement of an organisation's processes and products;
- Improve the organisation's reputation or avoid damage to it;
- Improve domestic and international competitiveness; and

Provide confidence of fair and consistent treatment of disputes throughout the global marketplace.¹⁴¹

ISO 10003 is structured similar to ISO 10002 and is also generic in nature. Interestingly, the standard provides an appendix on *Guidance on fairness*, which provides information on how to achieve fairness or natural justice, but these concepts of fairness or natural justice are not well defined.

ISO 10003 was published in draft form in July 2006. Because of its nature, it would primarily apply to classical or executive ombudsman programmes.

Organisational ombudsmen do not conduct investigations or report findings so many of the criteria found in the ISO standards would not be applicable. This standard is applicable to complaints generated from outside of an organization and resolved by an established internal or external complaints system. While ISO 10003 has commercial entities the principles enumerated therein (fairness of process, flexibility, dialogue, etc) may equally apply classical or executive ombudsman practices.

4.4 ISO 10002 Applied to the ICANN Office of the Ombudsman

These ISO standards may be used by individual ombudsman practitioners to help evaluate or benchmark operations and activities. The evaluation or benchmarking process may take place through one of three mechanisms: self-evaluation, peer evaluation, or evaluation by an ISO-approved standards evaluator. Each form of standards comparison has its advantages and disadvantages, as can be seen in Table 4.1.

¹⁴¹ International Organisation for Standardization, 2006, Quality management – Customer satisfaction – Guidelines for dispute resolution external to organisations, Draft Standard ISO 10003, Geneva ppvi–vii

Table 4.1 – ISO Evaluation Methods

Evaluation Method	Advantages	Disadvantages
Self-Evaluation	Low cost; may be done over time, or at a single window of time; practitioner is knowledgeable about the operation – evaluation may be done quickly; protects confidentiality	May be seen as insular or lacking in independent credibility; may not be able to use comparators; practitioners lack of evaluation experience
Peer Evaluation	Cost-effective; outsider review promotes independent results; promotes collegial relationships; reciprocal evaluations by participants encourages development of best practices	Finding a colleague with a similar ombudsman operation; peers may lack or have disparate evaluation skills; may be seen as a quid pro quo arrangement
ISO Approved Evaluator	Likely completed quickly, and with professional reporting; credibility of third-party review; “bragging rights” over meeting ISO standards	May have contractor costs

4.4.1 ICANN’s Experience with ISO Evaluation

The ICANN Office of the Ombudsman participated in the research by an impartial application of these generic standards to its specific use and operations. The ICANN Office of the Ombudsman had been in operation for some three months when it began an evaluation process with an ISO evaluator. This initial time frame was sufficient for the office to establish two major policy documents: the ombudsman framework, and the results-based management accountability framework. These documents establish the basic operational activities of the office.

The Office of the Ombudsman took an early decision to use an ISO evaluator, as opposed to self, or peer, evaluations for a number of reasons:

- Independence of the evaluator – arm’s-length reporting;

- A desire to demonstrate credibility by attaching to the ISO standards credibility;
- Cost was not an overriding factor;
- A desire to validate the creation of the office early on with the community, the organisation, and the Board of Directors by demonstrating value;
- The ICANN Ombudsman is unique in construct and operations.

In this case, an ISO evaluator was selected from a roster of evaluators in geographic proximity to ICANN's offices in Marina del Rey, California, and then by determining which of those evaluators were certified in the particular standard (10002). A number of evaluators were interviewed, and final selection was made based on availability, experience with the standard, and cost. Ms. Beth Glassman of Los Angeles was selected and awarded the contract after the agreement of a statement of work.¹⁴²

It was agreed that the evaluator would not only conduct an evaluation of the Office of the Ombudsman, but also of wider ICANN operations and management practices as applied to ISO standard 9001:2000. This provided for a scale of economy and a subsequent cost savings to the Office of the Ombudsman.

¹⁴² The two ISO standards (10002 and 10003) can be found on the ISO website at the following URLs: <http://www.iso.org/iso/en/CatalogueDetailPage.CatalogueDetail?CSNUMBER=35539&ICS1=3&ICS2=120&ICS3=10> and <http://www.iso.org/iso/en/CatalogueDetailPage.CatalogueDetail?CSNUMBER=38449&scopelist=PROG RAMME>. The standards are available for sale at a cost of 65–100 Swiss Francs (CHF). There is a strict copyright and use policy attached to the purchase of the standards, which restricts copying, printing, or file sharing. ISO evaluators can be found by verifying the roster on the appropriate national standards institute website or by contacting the appropriate body.

The evaluations were conducted over several weeks on a part-time basis. The basis of the evaluation was a comparison of the Ombudsman operations and policy frameworks against the enumerated ISO standards by a certified ISO analyst. The process included the evaluator researching a number of documents and website materials produced by ICANN and the Office of the Ombudsman, followed by in-person and telephone interviews with the Ombudsman and ICANN staff and managers. The evaluator consolidated the results and provided separate reports to the organisation on its criteria, and to the Office of the Ombudsman as a single entity.

The evaluation generally supported the establishment of the Office of the Ombudsman, indicating that the office met the intent and general requirements of the standards. The evaluator recommended improvements in two areas: the development of a case management system, and the formalizing of a contract and term renewal process to demonstrate independence of the Office. These areas of concern have since been resolved.

The research conducted through the ICANN Office of the Ombudsman demonstrated that worthwhile analysis could be achieved by applying generic standards to specific operations. Appendix Three of this dissertation is the report prepared by the ISO analyst; and this demonstrates the applicability of the exercise.¹⁴³ The use of an ISO evaluator proved to be a positive, cost effective, and timely first step in a long-term process of evaluation for the ICANN Office of the Ombudsman. This evaluation provided a quick impact

¹⁴³ Glassman, Beth, 2005, **Letter to ICANN Ombudsman**, correspondence

review of the foundation of the office and its operations, and validated ICANN's selection of the incumbent.

4.5 Summary

This dissertation has considered the use of international standards; specifically against the test case, the ICANN Office of the Ombudsman, and more generally, as a component of the evaluation for ombudsman operations. The ISO has produced two standards, one approved and one in draft form; which can be useful to the ombudsman community. These ISO standards provide broad guidelines for handling complaints from within and outside an organisation. The standards are written in a way that allows an ombudsman to conduct self-evaluation, pair with a colleague for peer evaluation, or contract an ISO evaluator to benchmark operations and activities. The research conducted for this chapter, relying on the ISO analyst report,¹⁴⁴ indicates that these generic standards can be applied to ombudsman operations.

The use of generic standards, established by an international organization, in the development and application of the evaluation blueprint for ombudsman operations, adds critical weight to the evaluation process. The use of ISO standards, while not a complete review of the intricacies of ombudsman processes, allows for individual ombudsman operations to add to their capacity to evaluate from the recognized blueprint developed in this dissertation. Ombudsmen may conduct self evaluation using ISO standards by comparing their operations and policies against the international standards.

¹⁴⁴ Glassman, Beth, 2005, **Letter to ICANN Ombudsman**, correspondence

Chapter Five

Developing a Value Statement and Applying Professional Standards

5.1 Introduction

In developing and applying a blueprint for the evaluation of ombudsman operations, two key elements for the framing of the evaluation may be self defined values, and professional standards applicable to the particular form or location of the ombudsman practice. This chapter considers two additional sources of criteria or standards for the evaluation of ombudsman offices, with the ICANN Office of the Ombudsman as the case study. First, it reviews and evaluates the ICANN Office of the Ombudsman Value Statement (see Appendix 4).¹⁴⁵ Second, it reviews and discusses standards of practice which may be found in the various international and national ombudsman and related associations.

The value statement is a declaration of the intrinsic values of the ombudsman. The latter represents standards of practice, procedures, ethics, or values of ombudsman in a specific location or in a particular form of practice (classical, organisational, or executive).

5.2. Ombudsman Value Statement

In early 2005, the ICANN Ombudsman attended a training programme offered by what was then called The Ombudsman Association and is now the International Ombudsman Association. The Ombudsman Association is the professional association for organisational ombudsmen. During that training,

¹⁴⁵ ICANN Office of the Ombudsman, 2006, **The Values of this office are:**, <http://www.icann.org/ombudsman/articles/value-statement.pdf> (accessed January 28, 2007) attached at Appendix 4

some time was devoted to discussing ombudsmanship values.¹⁴⁶ However, apart from the Association's code of ethics, those values were not highly visible in the day-to-day correspondence of the ICANN Ombudsman nor in that of his peer colleagues.

The ICANN Ombudsman reflected on this lack of declared values and designed and published a value statement document. The value statement consists of six points:

The Values of this Office are:

- Respect for Diversity;
- Excellence in Ombudsmanship;
- Professionalism;
- Confidentiality;
- Impartiality; and
- Independence¹⁴⁷

The value statement reflects the situation of an executive ombudsman with an international community of participants. Each point reflects a particular value intrinsic to the ICANN Ombudsman programme. For example, the value statement of the Ontario Ombudsman is simply "Ontario's Watchdog."¹⁴⁸ The writing of a value statement by an ombudsman is a positive early step in establishing goals and objectives to assist the development of an overall evaluation programme.

¹⁴⁶ The Ombudsman Association, **Ombudsman 101 course Binder**, 2005, Tab 12

¹⁴⁷ ICANN Office of the Ombudsman, 2005, **Ombudsman Home Page** www.icannombudsman.org (accessed January 28, 2007)

The values are individually explained in Appendix 4.

¹⁴⁸ Presentation by Andre Marin, Ontario Ombudsman at the USOA Conference, September 2006

The value statement is made public. The six values are displayed on the ICANN Ombudsman's website and are part of the signature bar in every communication from the Ombudsman. The value statement is, in essence, a public declaration of core principles for the operation of the Office and its interaction with the community. An environmental scan and concurrent reviews of the literature indicate that this is likely the first use of a value statement in this manner by ombudsman operations. The feedback from the ombudsman peer community has been very positive, and the value statement has been considered for adoption by other ombudsmen.

The value statement can be used by complainants who may challenge the ombudsman on whether the actualized values are the same as the declared values. For example, the ICANN Ombudsman was recently challenged on the value Respect for Diversity, as the Ombudsman had corresponded with a member of the community during a period when the member was on an extended holiday weekend specific to his country. These challenges and feedback are rare, but they do enable issues to be raised in ongoing evaluations of the Office. Certainly, a rise in number of issues raised by the community that the Ombudsman actions were inconsistent with the value statement would give rise to further self-evaluation.

A value statement also gives ombudsman practitioners a self-evaluation tool.

For example, the value respect for diversity states:

The Office of the Ombudsman recognizes and honors the fact that members of the ICANN community come from across the face of the globe. This diversity means that the Office of the Ombudsman will respect that different cultures view disputes and

conflict through different lenses. The Ombudsman will always be open to learning about cultural differences in responding to disputes and conflict.¹⁴⁹

Using this value for a self-evaluation exercise, an ombudsman may review file intakes to verify the origin of complaints and review correspondence with a goal of trying to understand whether any complaints stem from a different conflict resolution paradigm. Such paradigms may be social, cultural, political, or religious. The skilled ombudsman will reflect on his or her approach. Did his or her conflict culture or paradigm drive the resolution? Did the ombudsman establish an environment of trust? Did the complainant approach the ombudsman or the issue in a cultural paradigm different than the ombudsman's own? Did the ombudsman try to use his or her paradigm to overshadow the complainant's? In a reflective evaluation, each stated value can be evaluated by the practitioner or a third party.

The development of a value statement by ombudsman practitioners is a meaningful exercise. First, it is a beginning step in a self-reflective process. It helps to define how an ombudsman office sees itself and how it perceives its conduct. For example, Ontario Ombudsman's value statement is short and to the point: "Ontario's Watchdog." Second, the value statement is a commentary that permits evaluation. Andre Marin, the Ontario Ombudsman, now has a self-assessment tool at his disposal. Evaluation will indicate to him, the legislature, and the community, whether he does, in fact, act as Ontario's Watchdog.¹⁵⁰

¹⁴⁹ ICANN Office of the Ombudsman, 2006, **The Values of this office are:**, <http://www.icann.org/ombudsman/articles/value-statement.pdf> (accessed January 28, 2007) attached at Appendix 4

¹⁵⁰ "this Office should be the independent watchdog of all government action, whether carried out directly by public servants or by those privatized offices that do the work for the Government of Ontario

5.3. Standards of Practice and Ombudsman Professional Bodies

There are several ombudsman professional bodies or associations across the globe. They reflect the ombudsman's geographic location or type of practice (classical, organisational, or executive), or both. This dissertation examines several professional bodies to find whether standards of practice exist and any commonalities among these associations.

The following associations were investigated:¹⁵¹

- International Ombudsman Association (IOA). The IOA is a recent amalgam of organisational and university and college ombudsmen. It serves organisational ombudsmen on an international basis. Its membership numbers close to 700.
- Forum of Canadian Ombudsmen (FCO). The FCO is the professional body for all types of ombudsmen who practice in Canada. It has approximately 400 members.
- United States Ombudsman Association (USOA). The USOA is composed of governmental or classical ombudsmen in the United States. Its membership also includes a number of ombudsmen from Canada and other countries. The USOA has 121 members.
- British and Irish Ombudsman's Association (BIOA) represents ombudsman in the United Kingdom and Ireland.

using taxpayers' dollars." Andre Marin, Ombudsman in: Ombudsman Ontario, **Annual Report 2005–2006** p5

¹⁵¹ The web addresses for these associations are: www.ombudsassociation.org, www.ombudsmanfourm.ca, www.usombudsman.org, www.bioa.org.uk, and www.law.ualberta.ca/centres/loi/

- International Ombudsman Institute (IOI) is the global collegium for governmental or classical ombudsmen. Its membership numbers 137.¹⁵²

Neither the Forum of Canadian Ombudsmen nor the British and Irish Ombudsman's Association have standards or criteria available, probably because these associations represent classical, executive, and organisational ombudsmen. Standards of practice with respect to criteria such as record keeping vary across these classifications of practice and the legislative acts that create the offices. Therefore, it would be extremely difficult to develop standards generic enough to be applicable and meaningful enough to be relevant.

The three remaining associations do publish information on standards. The goal of this section of Chapter Five is to outline those standards or criteria. Some of the standards or criteria are also reviewed in Chapter Two, Review of the Literature, and Chapter Six, Literature Based Review. Chapter Two is a broad review of literature relating to evaluation; while Chapter Six is an in-depth analysis of three documents, from which a self evaluation tool is developed.

This section identifies the standards; however, review of these standards is undertaken elsewhere in this dissertation.

¹⁵² Voting members: Africa – 17, Asia – 8, Australasia/Pacific – 18, Caribbean & Latin America – 10, Europe – 67, North America – 17: Nonvoting members: Associates: 8, Individuals: 26, Libraries: 8 Nonvoting Honourary Members: 9 Membership = 188. email correspondence from IOI Secretariat April 16, 2007

5.3.1 International Ombudsman Association

The International Ombudsman Association (IOA) has produced two key documents that provide standards or criteria: the IOA Standards of Practice¹⁵³ and the IOA Code of Ethics.¹⁵⁴ These documents, each one page long, provide organisational ombudsmen with ethical guidance and operational standards in four specific areas—independence, neutrality and impartiality, confidentiality, and informality—as well as other standards.

The Code of Ethics is the primary document, and the Preamble to the Standards of Practice indicate that they are “based upon and derived from”¹⁵⁵ the Code of Ethics. The Standards of Practice further defines each of the four broad principles with examples and practice statements.

For example, Standard 1.2, concerning Independence states, “The Ombudsman holds no other position within the organisation which might compromise independence.”¹⁵⁶ Similarly, Standard 3.3, dealing with Confidentiality states, “The Ombudsman does not testify in any formal process inside the organisation and resists testifying in any formal process outside of the organisation, even if given permission or requested to do so.”¹⁵⁷

5.3.2 United States Ombudsman Association

The USOA has produced two documents which provide guidance on standards. The first document is the Governmental Ombudsman

¹⁵³ International Ombudsman Association, 2007, **IOA Standards of Practice**, http://www.ombudsassociation.org/standards/Code_Ethics_1-07.pdf (accessed April 5, 2007)

¹⁵⁴ International Ombudsman Association, 2007, **IOA Code of Ethics**, http://www.ombudsassociation.org/standards/Stds_Practice_1-07.pdf (accessed April 5, 2007)

¹⁵⁵ International Ombudsman Association, 2007, **IOA Standards of Practice**, http://www.ombudsassociation.org/standards/Code_Ethics_1-07.pdf (accessed April 5, 2007)

¹⁵⁶ Ibid

¹⁵⁷ Ibid

Standards.¹⁵⁸ This document, produced in 2003, uses the second document, Essential Characteristics of a Classical Ombudsman,¹⁵⁹ as a key contributor. The Essential Characteristics paper is examined at length in Chapter Six, Literature Based Review.

Both documents establish standards, or “irreducible minimum characteristics”:¹⁶⁰ independence, impartiality and fairness, credibility of the review process, and confidentiality.

Each broad topic is further defined through examples and explanations relating to each. For example, Impartiality, Standard 2, states, “the Ombudsman holds no other public office that has the potential of creating a conflict of interest or the appearance of a conflict of interest.”¹⁶¹

Confidentiality, Standard 3, states, “The Ombudsman shall not be compelled to testify or release records.”¹⁶²

The core standards of both the IOA and USOA are remarkably similar, to the extent that each represents a different form of ombudsmanship. Three of four core standards are almost identical.

The USOA standard for Independence states, “The Ombudsman’s office, in structure, function, and appearance, should be free from outside control or

¹⁵⁸ United States Ombudsman Association, 2003, USOA Governmental Ombudsman Standards, http://www.usombudsman.org/documents/PDF/References/USOA_STANDARDS.pdf (accessed June 13, 2007)

¹⁵⁹ Gottehrer, Dean et al., 1998, **Essential Characteristics of a Classical Ombudsman**, http://www.usombudsman.org/en/references/more_references/essential_characteristics.cfm (accessed September 15, 2006)

¹⁶⁰ Ibid

¹⁶¹ United States Ombudsman Association, 2003, USOA Governmental Ombudsman Standards, http://www.usombudsman.org/documents/PDF/References/USOA_STANDARDS.pdf (accessed June 13, 2007) p6

¹⁶² Ibid, p7

influence.”¹⁶³ The IOA Code of Ethics, the basis for the Standards of Practice, says, “The Ombudsman is independent in structure, function, and appearance to the highest degree possible within the organisation.”¹⁶⁴

The USOA, in part, defines Impartiality as follows: “The Ombudsman should receive and review each complaint in an objective and fair manner, free from bias, and treat all parties without favor or prejudice.”¹⁶⁵ The IOA states: “The Ombudsman, as a designated neutral, remains unaligned and impartial. The Ombudsman does not engage in any situation which could create a conflict of interest.”¹⁶⁶

The IOA speaks of Confidentiality in the following terms: “The Ombudsman holds all communications with those seeking assistance in strict confidence, and does not disclose communications unless given permission to do so.”¹⁶⁷

The USOA standards state: “The Ombudsman shall have the privilege and discretion to keep confidential or release any information related to a complaint or investigation.”¹⁶⁸

Research of these three sets of standards indicates that there is level of consistency and a mutually agreeable definition of the core principles of confidentiality, impartiality, and independence. The research posits that these three principles may, therefore, be considered universal for ombudsmanship.

¹⁶³ United States Ombudsman Association, 2003, USOA Governmental Ombudsman Standards, http://www.usombudsman.org/documents/PDF/References/USOA_STANDARDS.pdf (accessed June 13, 2007) p1

¹⁶⁴ International Ombudsman Association, 2007, **IOA Code of Ethics**, http://www.ombudsassociation.org/standards/Std Practice_1-07.pdf (accessed April 5, 2007)

¹⁶⁵ United States Ombudsman Association, 2003, USOA Governmental Ombudsman Standards, http://www.usombudsman.org/documents/PDF/References/USOA_STANDARDS.pdf (accessed June 13, 2007) p1

¹⁶⁶ International Ombudsman Association, 2007, **IOA Code of Ethics**, http://www.ombudsassociation.org/standards/Std Practice_1-07.pdf (accessed April 5, 2007)

¹⁶⁷ Ibid

¹⁶⁸ United States Ombudsman Association, 2003, USOA Governmental Ombudsman Standards, http://www.usombudsman.org/documents/PDF/References/USOA_STANDARDS.pdf (accessed June 13, 2007) p2

The IOA and the USOA diverge on the last pairing of core principles, and this relates to type of ombudsmanship that each represents. The IOA ethics and standards refer to informality. The last core principle for the USOA is a Credible Review Process. These are divergent because classical ombudsman, as represented by the USOA, conduct formal investigations, and these enquiries demand high standards of review to allow the ombudsman to make meaningful and relevant recommendations. On the other hand, organisational ombudsmen do not engage in formal enquiries, but rather use an informal approach to build capacity with the parties to obtain resolution.¹⁶⁹

A comparison between the two sets of standards reveals that even the particular standards are strikingly similar. Table 5.1 offers a comparison between the standards enumerated between the two associations, indicating where the standards are similar or divergent. The areas of similarity and divergence again relate to the generally similar functioning of these two types of ombudsmen, until the point of conducting investigations (classical ombudsmen) versus acting as a neutral party to actualize individuals to resolve their own issues (organisational ombudsmen).

That there is some degree of similarity, or overlap, between these types of practitioners means that language underlying the fundamental or core principles, where there is commonality, may logically be used by practitioners to determine whether they are meeting professional standards. For example, if an organisational ombudsman wanted to gain insight into his or her level of

¹⁶⁹ “An Organisational Ombuds ordinarily addresses problems presented by members, employees or contractors of an entity concerning its actions or policies. An Organisational Ombuds may undertake inquiries and advocate for modifications in policies or procedures.” American Bar Association, 2004, **Standards for the Establishment and Operation of Ombuds Offices**, <http://www.abanet.org/adminlaw/ombuds/115.pdf> (accessed October 30, 2006) p20

independence, they might equally look to the USOA standards as to the IOA standards to develop language to formulate the appropriate evaluation questions. The gap between the standards concerning informality and investigation was discussed previously.

Table 5.1 – Comparison of IOA – USOA Standards

Standard	Similar	Divergent	IOA ¹⁷⁰	USOA ¹⁷¹
1 Independent of other entities	√		1.1	A.2 B.1
2 No other position	√		1.2	B.1 B.2
3 Sole discretion over ombuds process	√		1.3	A.7 A.8
4 Access and ability to obtain information	√		1.4	D.7
5 Select staff – set budget	√		1.5	A.5 D.3
6 Ombudsman is neutral	√		2.1	B.5
7 Ombudsman is fair and objective	√		2.2	B.4 B.5
8 Reports to highest authority		√	2.3	
9 No additional role – conflict of interest	√		2.4	B.1 B.2 B.3
10 Must consider all parties' concerns	√		2.5	D.9
11 Capacity building for resolution		√	2.6	D.6
12 All communication to ombudsman confidential	√		3.1	C.1 C.2
13 All communication by ombudsman while resolving confidential	√		3.2	D.1 D.2
14 Ombudsman does not testify	√		3.3	A.9 C.3
15 Identity of complainants not revealed	√		3.4	D.2 D.8
16 Ombudsman keeps no records		√	3.5	
17 Secure data retention and destruction	√		3.6	
18 Out-reporting done with confidentiality – annual report	√		3.7	C.2 D.8 D.14
19 Ombudsman is not an office of notice		√	3.8	
20 Ombudsman operates on an informal basis	√		4.1	D.2
21 Concerned with procedure and systemic problems – issues	√		4.2	D.6
22 Does not make binding decisions		√	4.3	
23 Not a formal dispute resolution channel		√	4.4	
24 Does not do formal investigations		√	4.5	
25 Conducts trend analysis		√	4.6	
26 Follows standards	√		4.7	D.15

¹⁷⁰ International Ombudsman Association, 2007, **IOA Code of Ethics**, http://www.ombudsassociation.org/standards/Std Practice_1-07.pdf (accessed April 5, 2007)

¹⁷¹ United States Ombudsman Association, 2003, USOA Governmental Ombudsman Standards, http://www.usombudsman.org/documents/PDF/References/USOA_STANDARDS.pdf (accessed June 13, 2007) p2

Standard	Similar	Divergent	IOA ¹⁷⁰	USOA ¹⁷¹
27 Endeavors to build trust		√	4.8	
28 Office established in law		√		A.1
29 Ombudsman only removed for cause		√		A.3
30 Ombudsman has sufficient resources		√		A.4
31 Defined legal jurisdiction over matters		√		A.6 D.5
32 No appeal of ombudsman findings		√		A.10
33 Authority to delegate power		√		D.3
34 Well qualified incumbent		√		D.1
35 Provides sufficient access to the community		√		D.4
36 Defined, transparent investigation process		√		D.10, 11, 12, 13

5.3.3 International Ombudsman Institute

The International Ombudsman Institute (IOI) represents classical or governmental ombudsman operations across the globe. One of its concerns is the development of ombudsman offices in governments where the office has not previously existed. Unlike the USOA members, who are classical or governmental ombudsmen in the United States, or the IOA members, who are organisational ombudsmen in corporate or academic America, the IOI deals with the development of ombudsmanship in many governmental systems. Political systems using ombudsmen may range from emerging democracies to traditional republican democracies to the classical ombudsman offices in Northern Europe where the ombudsman function has been established for more than 150 years. Many national and sub-national members of the IOI are dual or multidiscipline office whose mandate may also include Human Rights Ombudsman in tandem with governmental Ombudsman roles.

Due to the range of governmental and political systems represented by this group of ombudsmen, it is not surprising that the IOI standards or principles of ombudsmanship are generic and basic. The IOI describes an ombudsman as

an objective investigator who “deals with complaints from the public regarding decisions, actions, or omissions of public administration.”¹⁷²

The IOI describes, but does not establish standards for, the generic functioning of the ombudsman with respect to the following:

- The ombudsman’s power to investigate, make recommendations, and report on cases in annual reports;
- That ombudsman decisions are not binding; and
- The ombudsman is independent.¹⁷³

Interestingly, the IOI recognises that the ombudsman institution may exist in executive government with responsibility for a specific agency (the executive ombudsman), as opposed to having general jurisdiction over a broad range of governmental activities (the classical ombudsman). The IOI further recognises that in some countries, the ombudsman concept also applies to human rights commissions. Finally, the IOI recognises the existence of organisational ombudsmen, but cautions that its own membership and mandate deal with classical ombudsmen who deal with public administration.¹⁷⁴

5.4 Standards of Practice from Organisations Other than Ombudsmen

5.4.1 American Bar Association

During the 1960s, the concept of the ombudsman began to be established in the United States of America. In 1969, the American Bar Association (ABA)

¹⁷² International Ombudsman Institute, 2007, **Ombudsman Concepts**, <http://www.law.uablrta.ca/centres/oi/About-the-IOI/Concept-and-Organisation.php> (accessed April 10, 2007)

¹⁷³ Ibid

¹⁷⁴ Ibid

Administrative Law Section defined the concept for its members.¹⁷⁵ The ABA has continued its interest in the development of ombudsmanship in the U.S. The ABA has taken a number of steps with respect to the ombudsman profession, from creating a definition to creating model ombudsman statutes and creating revised recommendations and resolutions for guidance of the profession.

This research opines that ABA lawyers setting standards for the ombudsman profession is analogous to medical practitioners setting standards of practice for chiropractors. As lawyers and ombudsmen both aspire to the settlement or transformative resolution of conflict, medical practitioners and chiropractors might both be said to aspire to the wellness of the human body and the alleviation of pain. There are likely to be ombudsmen who have trained as lawyers and lawyers who have been ombudsmen. Similarly, there are likely to be chiropractors who have trained as medical doctors, and vice versa. However, one does not need to be a medical doctor to be qualified as a chiropractor, and one does not need to be a chiropractor to be a medical doctor. Arguably, members of the ombudsman profession do not need to be lawyers, and lawyers do not have to be trained as ombudsmen. While the ABA approach nominally affects ombudsman practicing in the United States, there is a density and influence to that population of ombudsmen which impacts the profession as a whole.

Members of the ABA, writing to the USOA membership in 2001, stated the following concerning the ABA's purpose in developing the standards:

¹⁷⁵ Hill, Professor Larry B., 1997, **American Ombudsmen and Others; or, American Ombudsmen and 'Wannabe' Ombudsmen**, <http://www.abanet.org/adminlaw/ombuds/wannabe.html> (accessed May 16, 2007) p4

... Rather the effort was a practical one; to set standards for the actual operation of ombudsman offices, not write idealized aspirations that would not and could not be realized in practice ... These standards were developed to provide advice and guidance on the structure and operation of ombudsmen offices so that ombudsmen may better fulfill their functions and so that individuals who avail themselves of their aid may do so with greater confidence in the integrity of the process.¹⁷⁶

If one were to remove the word ombudsman from that text and insert chiropractor instead, then pretend the letter was written by the American Medical Association, some considerable concern could be imagined over the perceived encroachment of one professional body over another. Arguably, there is encroachment over the ombudsman profession by the ABA in the United States and other areas of the world where ombudsmen receive training from or who are affiliated with United States-based ombudsman colloquia such as the USOA and the IOA.

The research notes that the ABA has developed a very well-documented set of standards concerning ombudsmen,¹⁷⁷ and that these are found on the websites of individual ombudsmen (i.e., the ICANN Ombudsman), and of ombudsman associations (i.e., the IOA and USOA). Thus, it may be inferred that the ombudsman profession is at least somewhat accepting of these standards.

However, while the ABA ombudsman standards were being developed between 2001 and 2004, correspondence from several parties indicates that

¹⁷⁶ Levine, Sharan et al., 2001, **Letter to USOA Members**, correspondence p2

¹⁷⁷ American Bar Association, 2004, **Standards for the Establishment and Operation of Ombuds Offices**, <http://www.abanet.org/adminlaw/ombuds/115.pdf> (accessed October 30, 2006)

stakeholders, both internal to the ABA and external to the ombudsman profession, were dissatisfied with the standards.

For example, Professor Hill wrote the following to the president of the ABA:

In capacity as the sole academic member of the ABA's Ombudsman Steering Committee, I offer this dissent to its recent Report to the House of Delegates of the Standards for the Establishment and Operation of Ombudsman Offices. I believe that the Report seriously misrepresents the ombudsman institution and puts the ABA on record as favoring various kinds of "quasi-ombudsmen" to the detriment of the "classical" or real, ombudsmen that report to the legislature.¹⁷⁸

Also in 2001, Barbara Tompkins, Ombudsman for the Province of Saskatchewan and president of the then Canadian Ombudsman Association, wrote to the ABA stating:

... One substantive goal was to ensure that the new definition included executive, internal, and other "ombudsman" who were not included in the 1969 definition. It does not appear that the committee gave serious consideration to the reasons that the existing standards excluded those roles. Instead, the Committee decided to redefine the word "ombudsman", irrespective of the likelihood (now fact) that in doing so it would unilaterally redefine and change a valued institution.¹⁷⁹

We are fully aware that a great deal of honest and thoughtful effort was necessary in the creation of this document and we regret that we feel compelled to take such a negative stand respecting its contents.¹⁸⁰

¹⁷⁸ Hill, Professor Larry B., 2001, letter to Martha Barnett, President, American Bar Association, correspondence p1

¹⁷⁹ Tompkins, Barbara, July 19, 2001, **Letter to the American Bar Association**, correspondence p1

¹⁸⁰ Ibid, p3

... However, if the Committee's purpose is, in fact, to promote and encourage the creation of ombudsman offices of all kinds, it seems to us that it would be helpful if they would consider revising the document to ensure that the interests and characteristics of all Ombudsmen are protected and, preferably, enhanced by the new document.¹⁸¹

In August 2001, Bill Angrick, Iowa Citizen's Aide/Ombudsman and past president of the USOA, stated:

The Board of Directors of the United States Ombudsman Association is opposed to Resolution 107D (Standards for the Establishment and Operation of Ombudsman Offices) as it is currently drafted ... If implemented it would have a detrimental impact upon established and proposed ombudsmen everywhere.¹⁸²

In 2004, a group of USOA members, including its president, wrote to the ABA stating that "... the USOA has repeatedly tried to make its views known and to participate in the shaping of the document (Standards for the Establishment and Operation of Ombudsman Offices). In spite of those repeated efforts, however, the Association finds that it still has serious concerns about the content of the "Standards".¹⁸³

The International Ombudsman Association prepared a lengthy brief to the ABA stating its position on the standards as follows: "The ABA Standards ... constituted for the first time that another profession has fully examined the

¹⁸¹ Ibid, p4

¹⁸² Angrick, William, August 2001, **Statement before the American Bar Association House of Delegates**, speech

¹⁸³ Matsunaga, Robin, et al., undated, **Letter to the American Bar Association**, correspondence

ombuds role in light of its own perspectives and interests, and offered its interpretation on the role.”¹⁸⁴

The IOA document resolves that the ABA Standards are so different from the IOA’s ethics and standards that the IOA reaffirmed its own Standards of Practice, effectively dismissing the ABA Standards. The commentary further states:

Specific next steps for our professional association include further clarification of our ethics, standards, and best practices, and enhancement of training programs to include these recommendations for best practices, with attention to giving our practitioners greater awareness of the ABA Standards and other legal issues that may impact our practices.¹⁸⁵

5.4.2. American Bar Association Standards

The preceding section documents the lack of universal acceptance of the ABA Standards for the Establishment and Operation of Ombudsman Offices, either by members of the ABA Committee which drafted the standards or by the various professional ombudsman associations. The two academic questions which arise from this observation are: Why are the standards unacceptable, and If they are unacceptable, is there any value in considering them?

Analysis of the standards and the various responses affirms a generally similar answer to both research questions. The first issue is that an external professional body is attempting to impose the standards. The legal profession

¹⁸⁴ International Ombudsman Association, March 14, 2006, **Guidance for Best Practices and Commentary on the American Bar Association Standards for the Establishment and Operations of Ombuds Offices, Revised February 2004** p2

¹⁸⁵ International Ombudsman Association, March 14, 2006, **Guidance for Best Practices and Commentary on the American Bar Association Standards for the Establishment and Operations of Ombuds Offices, Revised February 2004** p17

itself may, at a certain level, actually be antagonistic to the ombudsman approach to conflict management and resolution. If citizen redress and complaint handling can take place directly within a mandated ombudsman of the state or agency, it potentially dulls the import (and billable hours) of the legal profession in respect of such cases.

A core problem with the standards is that they approach the standardization of services offered by the types of ombudsman practitioners (classical, executive, and organisational) in an overly generalized manner. To extend the previous metaphor, the standards would be analogous to chiropractic doctors creating standards for use by all surgeons. The responses to the ABA Standards have been based largely on different classes of ombudsman attempting to reconcile the application of the ABA standards in comparison with other ombudsman classes and their own work. By contrast, the ISO standards discussed in Chapter Four are broad enough in scope to not only allow but also encourage discretion in their application.

The ABA Standards may be of value to practitioners if they are taken as optional lists, which ombudsman may or may not apply as the constitution of their offices permit. These standards are more fully discussed in Chapter Six, and are one of the three documents used in the development of Appendix 6, Fifty Questions for Self-Evaluation.

5.5 Summary

Two key elements for the framing of the evaluation blueprint may be the ombudsman self defined value statement; and professional standards applicable to the particular form or location of the ombudsman practice. This chapter considered these two additional sources of criteria or standards for the evaluation of ombudsman offices, with the ICANN Office of the Ombudsman as the case study.

The development of a value statement by ombudsman practitioners is a meaningful exercise. First, it is a beginning step in a self-reflective process. It helps to define how an ombudsman office sees itself and how it perceives its conduct. For example, Ontario Ombudsman's value statement is short and to the point: "Ontario's Watchdog." Second, the value statement is a commentary that permits evaluation. Andre Marin, the Ontario Ombudsman, now has a self-assessment tool at his disposal. Evaluation will indicate to him, the legislature, and the community, whether he does, in fact, act as Ontario's Watchdog.¹⁸⁶

The standards of the various ombudsman institutions and associations are varied. They reflect not only the type of ombudsman practice, but also the variety of governmental and political systems that exist. A challenge occurs when an external party sets standards for ombudsmen to follow. However, the analysis in this chapter has shown that despite the differences in the various fields of practice, there are still many commonalities in ombudsman standards.

¹⁸⁶ "this Office should be the independent watchdog of all government action, whether carried out directly by public servants or by those privatized offices that do the work for the Government of Ontario using taxpayers' dollars." Andre Marin, Ombudsman in: Ombudsman Ontario, **Annual Report 2005–2006** p5

A challenge for the ombudsman field in the future, which is discussed more fully in Chapter Eleven, is the need for all types of ombudsmen and their associations and institutes to develop their own meaningful and relevant standards. There are obvious limitations to this goal when the variety of governmental, legal, and corporate structures is considered. However, it may be possible for such research to take place on a two-tiered level; first, by the various associations, and second, by cooperating with an international body such as the ISO to distill those common factors. This approach would undoubtedly lead to a document that better meets the aspirations of its constituency than does the ABA Standards.

Chapter Six

Literature Based Evaluation

6.1 Introduction

This chapter undertakes a review of the literature that could be used to develop evaluation criteria. It begins with a review and analysis of three key documents identified in the literature review (Chapter 2.8). The research then extracts standards from the literature that could be used to develop evaluation criteria. These criteria were then applied to the ICANN Office of the Ombudsman, as the test case for this research; and finally, a set of “Fifty Questions for Self Evaluation” were developed as part of the overall blueprint for evaluation.

The goal of the secondary review was to determine any resources that would enable the ombudsman to:

- Define evaluation criteria;
- Construct logical standards during the evaluation; and
- Determine which criteria and standards are most likely to be critical in the practice of ombudsmanship.

Once the literature review was completed, an evaluation map for the ICANN Office of the Ombudsman was constructed with respect to the criteria, standards, and emphasis found. A goal of the research is to develop a series of self-evaluation questions (refer to Appendix 6) which ombudsman practitioners can use to evaluate their own operations.

The literature review is a two-step process: first, a review and report by the Office of the Ombudsman, and second, a review of the results by an outside

party to test the veracity of the findings. In an ombudsman setting this second review may be done by a peer, the entity the ombudsman serves, or by a paid consultant.

This assessment focuses on providing an evaluation of the structure and operations of the Office of the Ombudsman, as opposed to an evaluation of the complaints, investigations, and alternative dispute resolution processes used by the ombudsman in dealing with the community. This is a central component of the formative and summative evaluations to be conducted in the future (in accordance with the Office of the Ombudsman Results-based Management Accountability Framework in Appendix 2).

A second step in the process was to have a knowledgeable and qualified analyst¹⁸⁷ review of the findings of the Office of the Ombudsman in this evaluation, and provide fact checking and commentary. For purposes of the research, this external review was to validate the appropriateness of this analytical approach in evaluating a spectrum of ombudsman operations. The third-party review provides the ICANN Board of Directors with an independent voice about ombudsman functions, and reduces the challenges of self congratulatory reporting.

The research in this chapter considered three test evaluation questions using the ICANN Office of the Ombudsman as a research subject. These evaluation questions provided a basis to determine whether:

- The ICANN Office of the Ombudsman resembles what the literature describes as a well formulated ombudsman institution;

¹⁸⁷ In this case, Mr. John Zinsser. His review is attached as Appendix 5 to this dissertation.

- There are service, process, resource or structural-functional gaps, flaws, or omissions in the ICANN Office of the Ombudsman programme, or in the ICANN institutions relating to the Ombudsman, and to identify those deficiencies; and
 - The standards of practice used by the ICANN Office of the Ombudsman demonstrate that it is a center of excellence in the field.

6.2 Identifying, Reviewing, and Analyzing the Literature

A small number of practitioner-based documents were identified. The three seminal works, which were relied on during the course of this evaluation, are:

- *Standards for the Establishment and Operation of Ombuds Offices*, by the American Bar Association (ABA) ¹⁸⁸;
- *Essential Characteristics of a Classical Ombudsman*, published by the United States Ombudsman Association (USOA) ¹⁸⁹; and
- *Creating the Office of the Ombudsman*,¹⁹⁰ by Rick Russell, a solicitor, ombuds, and alternative dispute resolution practitioner.

6.3 What Does the Literature Reveal?

A number of factors should be discussed prior to analysis of the criteria, standards, and emphasis found in the three noted documents. First, the USOA document is an iterative document, taking its genesis from a list

¹⁸⁸ American Bar Association, 2004, **Standards for the Establishment and Operation of Ombuds Offices**, <http://www.abanet.org/adminlaw/ombuds/115.pdf> (accessed October 30, 2006)

¹⁸⁹ United States Ombudsman Association, 2006, **History of the Public Sector Ombudsman**, http://usoa.non-profitsites.biz/en/About_Us/history.cfm (accessed October 15, 2006)

¹⁹⁰ Russell, Rick (date unknown), **Creating the Office of the Ombudsman**, <http://www.agreeinc.com/ombudsman.html> (accessed January 27, 2007)

developed in the ABA standards.¹⁹¹ Gottehrer et al.,¹⁹² authors of the USOA document, relied on the initial ABA standards in their paper and defined and expanded upon the characteristics in the ABA standards. These two documents are primarily focused on classical or governmental ombuds schemes. These are typically ombudsmen appointed by a statutory authority such as a legislature, with mandates related to the provision of governmental administration in a particular jurisdiction. The ICANN Ombudsman is an executive ombudsman. The ABA standards define this type of ombudsman as:

An executive ombudsman may be located in either the public or private sector and receives complaints from the general public or internally and addresses actions and failures to act of the entity, its officials, employees, and contractors.¹⁹³

The Russell paper is written from the viewpoint of an organisational ombudsman. The ABA standards define this type of ombuds as, “ordinarily addresses problems presented by members, employees, or contractors of an entity concerning its actions or policies.”¹⁹⁴

For ease of comparison, it may be worthwhile to think of an executive ombudsman as having some features of both the classical and organisational ombudsman. While housed within an organisation, the executive ombudsman takes complaints from the general community the entity serves.

¹⁹¹ American Bar Association, 2004, **Standards for the Establishment and Operation of Ombuds Offices**, <http://www.abanet.org/adminlaw/ombuds/115.pdf> (accessed October 30, 2006) Footnote 12

¹⁹² Gottehrer was Secretary of the USOA

¹⁹³ American Bar Association, 2004, **Standards for the Establishment and Operation of Ombuds Offices**, <http://www.abanet.org/adminlaw/ombuds/115.pdf> (accessed October 30, 2006) p7

¹⁹⁴ American Bar Association, 2004, **Standards for the Establishment and Operation of Ombuds Offices**, <http://www.abanet.org/adminlaw/ombuds/115.pdf> (accessed October 30, 2006) p20

While Russell concentrates on organisational ombudsmanship, his paper is of assistance as it defines and illustrates criteria which can also be applicable for an executive ombudsman structure. Russell does not comment on the principles of confidentiality and impartiality, but does explore principles of natural justice in some depth, as in criterion (3) Due process, in Table 6.1, Summary of Evaluation Criteria and Standards.

Table 6.1 is a composite of the criteria found in the three documents. In sum, 54 criteria and standards are nominated in the examined literature. Some of the criteria, such as (2) Independence, (4) Access to information and staff, (10) Power of own motion, (40) Power of recommendations and public criticism, and (46) that the organisation is not to impede the ombudsman in his work, are common themes in all three documents. One can state that there is emphasis on these elements as being universal characteristics of a well functioning ombudsman programme.

Table 6.1 – Summary of Evaluation Criteria and Standards

	Ombudsman Criteria	1) Agree Dispute Resolution ¹⁹⁵	2) United States Ombuds. Assoc. ¹⁹⁶	3) American Bar Assn Ombuds Cmte ¹⁹⁷
1	Alignment	√		
2	Autonomy – arm’s length – Independence	√	√	√

¹⁹⁵ Russell, Rick, (date unknown) **Creating the Office of the Ombudsman**, <http://www.agreeinc.com/ombudsman.html> (accessed January 27, 2007)

¹⁹⁶ United States Ombudsman Association, 2006, **History of the Public Sector Ombudsman**, http://usoa.non-profitsites.biz/en/About_Us/history.cfm (accessed October 15, 2006)

¹⁹⁷ American Bar Association, 2004, **Standards for the Establishment and Operation of Ombuds Offices**, <http://www.abanet.org/adminlaw/ombuds/115.pdf> (accessed October 30, 2006)

	Ombudsman Criteria	1) Agree Dispute Resolution ¹⁹⁵	2) United States Ombuds. Assoc. ¹⁹⁶	3) American Bar Assn Ombuds Cmte ¹⁹⁷
3	Due process – Natural Justice Principles applied	√		
4	Sufficient resources	√	√ (32)	
5	Access to Information, documents, staff	√	√ (46)	√
6	Community buy-in	√		
7	Clear mandate	√		√
8	Recourse – moral suasion – public criticism	√	√ (40)	
9	Accessibility (promotion – availability to the community)	√		
10	Power of own motion	√	√ (45)	√
11	Annual report	√		
12	Established terms of reference (TOR)	√		
13	Qualified – knowledgeable incumbent	√	√ (36)	
14	Advisory group	√		
15	Active public relations campaign – community education	√		√
16	Structural autonomy and accountability	√		
17	Filing system	√		
18	Database	√		
19	Balanced time management	√		
20	Reporting relationship with advisory and budget group	√		
21	Review of start up policy – TOR	√		
22	Independence		√	√
23	Impartiality and fairness		√	√
24	Credibility of the review process		√	
25	Confidentiality		√	√
26	Independence established by higher jurisdiction		√	
27	Independence – Separate from the organisation it reviews		√	√
28	Independence – Appointed by super majority		√	√
29	Independence – Long fixed term – reappointment possible		√	√
30	Independence – For cause removal by supermajority		√	√
31	Independence – High fixed salary		√	√
32	Independence – Appropriate budget – accountability of spending	√ (4)	√	
33	Independence – Sole authority to hire staff		√	√
34	Independence – Someone can always exercise the ombudsman role		√	
35	Independence – Decisions not reviewable		√	
36	Impartiality and fairness – Qualifications	√ (13)	√	
37	Impartiality and fairness – Supermajority to hire or remove		√	
38	Impartiality and fairness – No conflict of interest in activities		√	
39	Impartiality and fairness – Direct access to ombuds no fee required		√	
40	Impartiality and fairness – Power of recommendations and public criticism	√ (8)	√	√

	Ombudsman Criteria	1) Agree Dispute Resolution ¹⁹⁵	2) United States Ombuds. Assoc. ¹⁹⁶	3) American Bar Assn Ombuds Cmte ¹⁹⁷
41	Impartiality and fairness – Required to consult on adverse findings		√	√
42	Impartiality and fairness – Ombuds is an advocate for fairness, not the parties		√	
43	Credible review – Broad jurisdiction		√	√
44	Credible review – No parties exempt from complaining		√	
45	Credible review – Organisation not permitted to impede	√ (5)	√	√
46	Credible review – Grounds for review are broad, and focus on fairness		√	√
47	Credible review – Reports problems and recommendations, has ability to publish		√	
48	Credible review – Findings not reviewable		√	
49	Credible review – Ombuds cannot make binding orders		√	√
50	Confidentiality – Ombudsman has power to decide level of information to be disclosed		√	√
51	Confidentiality – Ombudsman will resist testifying		√	
52	Broad range of enquiry available			√
53	Discretionary power to refuse complaints and to publicize			√
54	Identify complaint patterns and trends			√

6.4 Methodology

The research considers each of the 54 indicators or criteria in the table and compares them with the bylaws, frameworks, web documents, and experiences of the ICANN Office of the Ombudsman. The purpose of the research is to compare the standards and criteria in the literature with the formative development of the Office of the Ombudsman: (1) to determine whether the Office resembles what an ideal ombudsman institution should look like; (2) to determine (and identify) any gaps in the Ombudsman programme or in the institution relating to the Ombudsman; and (3) to

acknowledge any standards of practice which enable the Office of the Ombudsman to be considered a center of excellence in the field.

Mr. John Zinsser, who did third-party analysis of the statistical comparison, which is the subject of Chapter Seven, and the system user survey, which is the subject of Chapter Eight, conducted a third-party review of the results of literature-based review.¹⁹⁸ In this case, the results were prepared on behalf of the Board of Directors Audit Committee. The Audit Committee validated the results and methodologies for the Board. Practitioners may validate results by having a third party or a peer ombudsman conduct an analysis of the results. The third-party comment on the literature-based review is found in Appendix 5.

6.5 Testing the ICANN Office of the Ombudsman on the Quality Control Criteria

The ICANN Office of the Ombudsman is used as the test case for the application of the criteria found:

6.5.1 Alignment

Russell states, “There is no use imposing an ombudsman upon an organisation that is hostile to reform and change and views complaints as trouble and trouble makers respectively ... The organisation must decide what it values in that system and know what it wishes to accomplish with it.”¹⁹⁹

The institutionalization of the ICANN Office of the Ombudsman is one of the last steps in the ICANN reform process. In June 2002, a Board Evolution and

¹⁹⁸ See Appendix 11, Introduction; and Appendix 10, Introduction and Executive Summary for further information on the use of third-party reviewers

¹⁹⁹ Russell, Rick (date unknown), **Creating the Office of the Ombudsman**, <http://www.agreeinc.com/ombudsman.html> (accessed January 27, 2007) para 2

Reform Committee recommended the establishment of the Office of the Ombudsman. “ICANN should create an Office of Ombudsman, headed by an Ombudsman hired by and reporting directly to the ICANN Board. The Office should have its own budget, directly authorized by the Board (but administered for reasons of financial control and other purposes by the President/CEO). The Office should operate under a charter adopted by the Board after public notice and comment.”²⁰⁰

The ICANN Ombudsman function was developed with input from the stakeholders, the ICANN community, and the organisation itself. It reflects the values the organisation wished to have in the Office. However, some members of the community have expressed a desire that the Office have powers more consistent with an inspector general, that is to say audit and fault finding in nature, rather than dispute resolving. This view is not consistent with the normal scope and mandate of ombudsmanship.

The Office of the Ombudsman further aligns itself with the organisation it serves. ICANN is a high-tech entity and a key player in the infrastructure of the global Internet. The Office of the Ombudsman is an online ombuds system, the only one found in the research. It aligns itself with the global mandate of the organisation by pronouncing a respect for the diversity of its community and the diverse manner in which its community approaches conflict.²⁰¹

²⁰⁰ ICANN Evolution and Reform, **ICANN: A Blueprint for Reform**, <http://www.icann.org/committees/evol-reform/blueprint-20jun02.htm> (accessed October 15, 2007)

²⁰¹ ICANN Office of the Ombudsman, 2006, **The Values of this office are:**, <http://www.icann.org/ombudsman/articles/value-statement.pdf> (accessed January 28, 2007)

6.5.2 Autonomy – Arms length – Independence from Organisational Structures

Autonomy is a core value in any ombuds programme. To be effective, an ombudsman must be able to operate with an arm's length relationship with the organisation. ICANN's Bylaw V states:

The principal function of the Ombudsman shall be to provide an *independent* internal evaluation of complaints by members of the ICANN community who believe that the ICANN staff, Board or an ICANN constituent body has treated them unfairly.²⁰²

The American Bar Association makes the following comment about independence:

The ombuds is and appears to be free from interference in the legitimate performance of duties and independent from control, limitation, or a penalty imposed for retaliatory purposes by an official of the appointing entity or by a person who may be the subject of a complaint or inquiry.

In assessing whether an ombuds is independent in structure, function, and appearance, the following factors are important: whether anyone subject to the ombuds's jurisdiction or anyone directly responsible for a person under the ombuds's jurisdiction (a) can control or limit the ombuds's performance of assigned duties or (b) can, for retaliatory purposes, (1) eliminate the office, (2) remove the ombuds, or (3) reduce the budget or resources of the office.²⁰³

The ICANN Ombudsman has no reporting or supervisory relationship with the organisation. There is a dashed-line relationship with the Board of Directors.

²⁰² ICANN, 2006, **Bylaw V**, <http://www.icann.org/general/archive-bylaws/bylaws-28feb06.htm#V> (accessed January 28, 2007) Sec 2

²⁰³ American Bar Association, 2004, **Standards for the Establishment and Operation of Ombuds Offices**, <http://www.abanet.org/adminlaw/ombuds/115.pdf> (accessed October 30, 2006) p4

The Ombudsman is required to produce an annual report of his activities. A monthly report is provided to the Board of Directors on a voluntary basis. The Ombudsman is not responsible for any other duty or function in the organisation and has no authority to direct staff.

Autonomy and distance from organisational structures is demonstrated in Bylaw V, which empowers the Ombudsman to develop his own budget for the operation of the Office and submit it to the Board without alteration by staff. While the Ombudsman relies on the organisation for the reimbursement of expenses, he is authorized to conduct business, make travel arrangements, and make purchases without organisational approval, if within the approved budget. The Ombudsman is bound by ICANN policy and procedures for the hiring of contract services, although the Ombudsman remains the absolute authority on selection of service providers to the office.

Autonomy and an arm's-length relation with ICANN is further demonstrated by other characteristics. While the Ombudsman has office space at the ICANN head office in Marina del Rey, California, the Ombudsman's primary office space is a home office in Vancouver, Canada. In addition to having an ICANN web address (www.icann.org/ombudsman/), the Ombudsman also has an independent web address (www.icannombudsman.org).

6.5.3 Due Process – Rules of Natural Justice Applied

Russell identified a number of factors that define due process or natural justice in the ombudsman context:

- Providing both sides to a dispute a full and fair opportunity to be heard

- Ensuring that no one in the organisation is sitting in an adjudicative capacity over a matter where he or she has a direct interest
- Providing an opportunity to fully respond to the case made by the “other side”
- Providing reasonable notice of any investigation or hearing to individuals affected by the controversy and allowing a fair length of time for parties to prepare and make submissions
- Where possible, providing reasons for decisions that affect people.²⁰⁴

The Office of the Ombudsman has developed an ombudsman framework, which is available on the ICANN Ombudsman website in six languages: Arabic, Chinese, English, French, German, and Spanish. The framework sets out how the Office of the Ombudsman conducts the business of ombudsmanship. Inherent in the framework is an obligation to provide services according to the International Ombudsman Association Standards of Practice. These documents set out operating procedures consistent with the principles of natural justice, and the Office ensures that all parties are treated in respect of those principles

6.5.4 Sufficient Resources

Russell states:

An ombuds office, properly managed, should model the kinds of administrative practices and behaviours it demands of other units within the discipline, profession or organisation it serves. Where an organisation does not provide the resources to allow

²⁰⁴ Russell, Rick, (date unknown) **Creating the Office of the Ombudsman**, <http://www.agreeinc.com/ombudsman.html> (accessed January 27, 2007)

this modeling to take place, it places the reputation of the entire enterprise at risk and may fairly expect to lose all or most of its investment.²⁰⁵

The ICANN Office of the Ombudsman is a sole practitioner entity. An adjunct ombudsman has been engaged to ensure that there is always someone available to act for the Office, should the Ombudsman be absent on leave, away from duties due to sickness, or in protracted travel status.

To date, these human resources have been sufficient to meet the requirements and demands placed on the Office. The Office relies on ICANN staff for support functions such as technology and report production.

The Ombudsman has reported in the several annual reports that budgetary resources allocated to the Ombudsman have been sufficient. This indicates that the Ombudsman believes that the resources supplied have been sufficient to meet the mandate established in Bylaw V, and on a par with other work units within ICANN.

6.5.5 Access to Documents, Information and Staff

The American Bar Association states that:

Ombuds need access to all information relevant to a complaint or a question so that the review is fair and credible, and the charter should authorize access to all relevant information and require the full cooperation of the program over which the ombuds has jurisdiction.²⁰⁶

The ICANN Bylaws state that the ombudsman shall:

²⁰⁵ Russell, Rick, (date unknown) **Creating the Office of the Ombudsman**, <http://www.agreeinc.com/ombudsman.html> (accessed January 27, 2007)

²⁰⁶ American Bar Association, 2004, **Standards for the Establishment and Operation of Ombuds Offices**, <http://www.abanet.org/adminlaw/ombuds/115.pdf> (accessed October 30, 2006) p11

. . . have the right to have access to (but not to publish if otherwise confidential) all necessary information and records from ICANN staff and constituent bodies to enable an informed evaluation of the complaint and to assist in dispute resolution where feasible (subject only to such confidentiality obligations as are imposed by the complainant or any generally applicable confidentiality policies adopted by ICANN).²⁰⁷

This bylaw provision gives the executive ombudsman wide-ranging authority to access documents and information and to take viva voce evidence from staff. To date there have been no challenges by ICANN when the Ombudsman has accessed information. However, the Ombudsman has noted that some staff members have been less responsive than others in their responses to the Ombudsman on two different files. The corporate secretary (the ICANN general counsel) acts as a resource to ensure staff compliance with requests for information if such information is not forthcoming from staff. This may be regarded as an informal compliance mechanism within the organisation.

The Office of the Ombudsman always retains the ability to publicly criticize the organisation or staff if information is not forthcoming.²⁰⁸ The ICANN Ombudsman has made one report to the Board of Directors that contained this criticism.

6.5.6 Community Buy-in

Russell states:

It has been my experience that large groups of people find it extraordinarily hard to create together but the same large groups have a tremendous capacity to criticize.

²⁰⁷ ICANN, 2006, **Bylaw V**, <http://www.icann.org/general/archive-bylaws/bylaws-28feb06.htm#V> (accessed January 28, 2007) Sec 3

²⁰⁸ See Section 6.4.40

Use that capacity to develop a better terms of reference and to achieve a measure of buy in to the Office at the outset.²⁰⁹

In June 2002, ICANN's Evolution and Reform Committee stated, "ICANN should create an Office of Ombudsman, headed by an Ombudsman hired by and reporting directly to the ICANN Board ... The Office should operate under a charter adopted by the Board *after public notice and comment*."²¹⁰

It was established earlier in this dissertation that the Office of the Ombudsman was the last step in the ICANN reform process, and that this reform was community or stakeholder driven. As noted in the quote above, the community has had buy-in through the public comment process. As the Office was established by bylaw and passed by the Board of Directors, which is a representation of the various stakeholder groups, it can be stated that the community had input into its genesis.

6.5.7 Clear Mandate

The American Bar Association observes:

Importantly, the ombuds' jurisdiction—who complains and who or what are complained about needs to be defined in advance, setting out the scope of the duties and authority. The ombuds's jurisdiction must be defined in an official act that establishes the office, which is appropriately called the "charter" in the Standards.²¹¹

Bylaw V clearly establishes the Ombudsman's mandate, which is to deal with fairness issues relating to acts, decisions, or inactions by the ICANN Board,

²⁰⁹ Russell, Rick (date unknown), **Creating the Office of the Ombudsman**, <http://www.agreeinc.com/ombudsman.html> (accessed January 27, 2007)

²¹⁰ ICANN Evolution and Reform, **ICANN: A Blueprint for Reform**, <http://www.icann.org/committees/evol-reform/blueprint-20jun02.htm> (accessed October 15, 2007)

²¹¹ American Bar Association, 2004, **Standards for the Establishment and Operation of Ombuds Offices**, <http://www.abanet.org/adminlaw/ombuds/115.pdf> (accessed October 30, 2006) p11

staff, or supporting organisations. The bylaw clearly states that the mandate does not apply to issues concerning membership on the Board of Directors, supplier relationships, or personnel matters.

The ICANN Office of the Ombudsman is an executive ombudsman, not an organisational ombudsman. Therefore, personnel matters are clearly outside the Ombudsman's purview. As the number of staff within the organisation grows, and as that staff is distributed across several nations, it will become increasingly likely that some form of internal ombudsman, either in-house or contracted, may become a necessary structure.²¹²

The Ombudsman Framework in Appendix 2 also provides direction on jurisdiction. The Ombudsman may, at his discretion, refuse to investigate matters over 60 days old, matters where the complainant is not the person affected, and matters of a trivial, vexatious, repetitive, or non-good faith nature.²¹³ As the American Bar Association notes, "The ombuds determines whether to accept or to act on a particular complaint or question. ... An ombuds may determine that the complaint is without merit."²¹⁴

6.5.8 Recourse – Moral Suasion – Public Criticism

The United States Ombudsman Association standards include the following statement:

²¹² There were about 30 staff when the Ombudsman was engaged, to a projected complement of about 100 employees and contractors in FY06–07

²¹³ ICANN Office of the Ombudsman, 2005, **Ombudsman Framework** <http://www.icann.org/ombudsman/documents/ombuds-frmwk-eng-20jun05.pdf> (accessed January 28, 2007)

²¹⁴ American Bar Association, 2004, **Standards for the Establishment and Operation of Ombuds Offices**, <http://www.abanet.org/adminlaw/ombuds/115.pdf> (accessed October 30, 2006) p11

If the results of an investigation and an Ombudsman's recommendations cannot be publicized, the function of the Ombudsman as a watchdog for the public interest is frustrated.²¹⁵

The Office of the Ombudsman, through a process found in the Ombudsman Framework, can use moral suasion through the power of publication should the Ombudsman be dissatisfied with steps taken by the organisation to redress issues. To date, this power has not been used.

6.5.9 Accessibility – Promotion – Availability to the Community

Russell defines accessibility as follows:

For an ombuds office to be useful and effective it needs to be accessible. Accessibility is comprised of at least two pieces:

1. Promotion – letting prospective users know the office is there and how it can help, and
2. Convenience – the ombudsperson must make him/herself readily available to people with complaints.

The first of these can be dealt with through public education, speaking engagements, conventional ... and the circulation of informational materials like pamphlets, guides, brochures, etc.

The second piece requires perhaps more inventiveness. 1-800 numbers and Home Pages on the Internet are two technological responses that will make the Ombuds Office more convenient to access. Larger organisations with a number of locations will

²¹⁵ United States Ombudsman Association, 2003, USOA Governmental Ombudsman Standards, http://www.usombudsman.org/documents/PDF/References/USOA_STANDARDS.pdf (accessed June 13, 2007) p10

have to look at branch Ombuds Offices, and providing a travel budget so that the Ombuds staff can go to the source to hear a complaint.²¹⁶

The mandate of the ICANN Office of the Ombudsman is unique in that its jurisdiction may extend to any domain name holder or Internet user on the planet who wishes to lodge a complaint, and these may be defined as stakeholders in the ICANN process. Indeed, ICANN's At-Large Advisory Committee (ALAC) exists to develop this individual or small group community involvement. With such a vast potential client group and limited human resources (a sole practitioner office), planning in the delivery of promotion or outreach is important. Through the first 18 months of operation outreach has been dedicated to three particular groups: ICANN staff, strategic stakeholders, and ICANN meeting participants.

ICANN staff members have been key participants in that they are likely the first line in the organisation to hear of community dissatisfaction or complaints of unfair treatment. The Ombudsman has briefed all staff on the operation of the Office, and each new staff member receives an ombuds orientation.

Key stakeholders are those in the community who act as a referral mechanism for members of the community who may wish to make complaints but are unaware of the Office of the Ombudsman. These include governmental organisations, civil society dealing with the Internet, legal and consumer protections groups, and ombudsman colleagues. It also includes the media.

²¹⁶ Russell, Rick (date unknown), **Creating the Office of the Ombudsman**, <http://www.agreeinc.com/ombudsman.html> (accessed January 27, 2007)

At each of the three ICANN meetings held throughout the year, the Ombudsman establishes a physical office space to be able to receive complaints in person, and makes a presentation to the Public Forum, a session schedule early in the events of the week-long meeting.

The Ombudsman must, in accordance with Bylaw V, produce an annual report of activities. To date, three annual reports have been published in six languages.

The Ombudsman uses outreach or publicity material consistent with that used by other ombudsman offices. To date these include lapel pins, keys rings, and note pads. A six-language, single-sheet brochure is in circulation in the community and for use by ICANN's regional managers.

As the ICANN Ombudsman serves a connected community, accessibility is linked to a web presence. The Ombudsman web page can be found at either www.icannombudsman.org or www.icann.org/ombudsman/. A link to the Ombudsman page is found on the front page of the ICANN site, and also on the navigation links. The Ombudsman site offers information about the Ombudsman, complaints, administrative fairness, and other matters. Importantly, the site provides for an online complaint and contact system. Complainants may contact the Ombudsman in the language of their choice, and translation is conducted by an arm's-length not-for-profit multicultural society. As Table 6.2 shows, complaints have been received from over 60 nations.

Table 6.2 – ICANN Ombudsman – Complaints by Country²¹⁷

Unknown	48	Greece, Hellenic Republic	8	Norway, Kingdom of	1
Argentina, Argentine Republic	2	Guatemala, Republic of	1	Pakistan, Islamic Republic of	2
Australia, Commonwealth of	37	Hong Kong, Special Administrative Region of China	4	Panama, Republic of	2
Austria, Republic of	3	Hungary, Hungarian People's Republic	2	Portugal, Portuguese Republic	1
Bangladesh, People's Republic of	1	India, Republic of	5	Russian Federation	1
Barbados	1	Indonesia, Republic of	1	Saudi Arabia, Kingdom of	1
Belgium, Kingdom of	6	Ireland	5	Viet Nam, Socialist Republic of	1
Bermuda	1	Israel, State of	6	Slovenia	1
Bolivia, Republic of	1	Italy, Italian Republic	3	South Africa, Republic of	9
Brazil, Federative Republic of	8	Japan	3	Spain, Spanish State	7
Belize	1	Korea, Democratic People's Republic of	1	Sweden, Kingdom of	3
Canada	72	Lebanon, Lebanese Republic	1	Switzerland, Swiss Confederation	3
Taiwan, Province of China	1	Malaysia	3	Thailand, Kingdom of	5
Colombia, Republic of	1	Maldives, Republic of	1	United Arab Emirates	1
Hrvatska (Croatia)	1	Malta, Republic of	2	Turkey, Republic of	5
Czech Republic	1	Mexico, United Mexican States	1	Ukraine	1
Denmark, Kingdom of	1	Namibia	6	Macedonia, the former Yugoslav Republic	3
Ecuador, Republic of	1	Netherlands, Kingdom of the	16	Egypt, Arab Republic of	1
France, French Republic	8	New Zealand	6	United Kingdom of Great Britain & N. Ireland	76
Germany	16			United States of America	1795
Gibraltar	1			Uruguay, Eastern Republic of	1

6.5.10 Power of Own Motion

The United States Ombudsman Association, in its definition of the essential characteristics of a classical ombudsman, states:

The Ombudsman may initiate an investigation without a complaint.

While most investigations will arise from a complaint to the Ombudsman, some matters will only be considered if the Ombudsman initiates an investigation. The authority to self-initiate an investigation allows the Ombudsman to act when information warranting

²¹⁷ November 1, 2004 to October 15, 2007

an investigation comes to his or her attention in the absence of a willing complainant.²¹⁸

Russell opines that, “The degree of comfort that an institution has with this power and the degree of comfort that an ombudsperson within such an institution has to use this power is one good way of gauging how proactive the organisation is where conflict is concerned.”²¹⁹

The ICANN Ombudsman finds the authority to make self-generated complaints in the Ombudsman Framework, and this power has been used.

6.5.11 Annual Report

Russell concludes that:

The Annual Report serves at least three important functions:

1. First and most importantly, it ensures accountability between the Office and the community it serves.
2. Secondly, it provides an administrative audit of the profession or organisation and holds administrators and executives accountable to the policy making body for actions taken throughout the year.
3. Thirdly, it provides a public medium to outline, discuss and advocate for policy and other changes that the Ombudsman has recommended to the profession or organisation throughout the year. . . .

The final thing to point out about the annual report is that it is the one activity that the Ombuds Office performs that benefits the entire organisation or

²¹⁸ United States Ombudsman Association, 2003, Essential Characteristics of a Classical Ombudsman, http://www.usombudsman.org/en/references/more_references/essential_characteristics.cfm#C (accessed June 15, 2007)

²¹⁹ Russell, Rick (date unknown), **Creating the Office of the Ombudsman**, <http://www.agreeinc.com/ombudsman.html> (accessed January 27, 2007)

profession. Recommendations contained in the annual report are general in nature and call for either policy changes or changes in administrative practice that benefit all individuals within the profession or organisation whether or not they access the Ombuds Office to file a complaint.

The ICANN Ombudsman is obligated under Bylaw V to make an annual report to the Board of Directors. This is a public report posted on the Ombudsman website. The Ombudsman has published three annual reports, and they are produced in six languages.²²⁰

6.5.12 Established Terms of Reference

The American Bar Association standards indicate that, “An entity undertaking to establish an ombuds should do so pursuant to a legislative enactment or a publicly available written policy (the “charter”) which clearly sets forth the role and jurisdiction of the ombuds and which authorizes the ombuds to ...”²²¹

The ICANN Ombudsman terms of reference are established through both Bylaw V and the Ombudsman Framework. These provide a set of operating principles for the Ombudsman consistent with standards in the field.

6.5.13 Qualified Knowledgeable Incumbent

Russell observes that:

An ombudsman defines his or her own role within the organisation to a greater extent than most other professionals. That individual needs to become knowledgeable about how the organisation works, and must have an awareness of the unique role of an ombudsman in a community and how it fits into the organisational culture and mission.

²²⁰ See: <http://www.icann.org/ombudsman/reports.html>

²²¹ American Bar Association, 2004, **Standards for the Establishment and Operation of Ombuds Offices**, <http://www.abanet.org/adminlaw/ombuds/115.pdf> (accessed October 30, 2006) p2

... an effective ombudsperson requires courage. He or she can expect to become less and less popular with peers as time progresses. The ombudsman will need to be prepared to champion unpopular and in some instances unsympathetic causes. They must have the energy and stamina to “buck the system” for a living while not losing either their objectivity or empathy for those involved in running the system.²²²

The ICANN community, the organisation, and the media²²³ appear to have accepted the inaugural Ombudsman as being well qualified for the position. There have been no challenges to the incumbent’s qualifications. On the basis of his qualifications, the Ombudsman has been admitted to membership in the Forum of Canadian Ombudsman, the International Ombudsman Association, the United States Ombudsman Association, and the International Ombudsman Institute.

6.5.14 Advisory Group

A governmental ombudsman may have a relationship with an ombudsman committee of the legislative body and an organisational ombudsman may have its own stakeholder and management advisory body. These groups may act as bodies to review the role, mandate, independent review capacity, function, and budget of the ombudsman. The ICANN Ombudsman relates principally with the Board of Directors’ Governance and Executive committees. The Executive Committee makes recommendations to the Board about the hiring, renewal, or dismissal of the Ombudsman, while the Governance Committee ratifies policy relating to the Ombudsman such as the Ombudsman Framework. While the relationship between these committees

²²² Russell, Rick, (date unknown) **Creating the Office of the Ombudsman**, <http://www.agreeinc.com/ombudsman.html> (accessed January 27, 2007)

²²³ See Kieren McCarthy’s The Register article, “Meet Frank Fowlie, the Internet’s physician,” or Gillian Shaw’s Canwest News story.

and the Ombudsman is seen to be positive, it is also noted that the Governance Committee has ratified neither the Ombudsman Framework nor its “after one year in operation” updates.

The ICANN Ombudsman believes that ICANN should create a more specific advisory group for its relationship with the Ombudsman.

The Office of the Ombudsman requests that the Board Governance Committee give consideration to the inauguration of a Board Ombudsman Committee, consisting of Board Members. This committee would have several purposes:

- To receive and manage reports made by the Office of the Ombudsman on behalf of the Board of Directors;
- To conduct dialogue with the Ombudsman concerning cases where the Ombudsman has been unable to resolve the matter;
- To consider the development of recommendations made by the Ombudsman;
- To consult with the Ombudsman on any proposed ‘own motion’ investigations;
- To act as the Board’s linkage with the Ombudsman on the management of the Office of the Ombudsman, discussions concerning performance, renewal, and recommendations to the Compensation Committee regarding bonus pay, and renewal pay;
- To conduct dialogue with the Ombudsman with respect to staffing levels, performance, evaluation, policy development concerning the Office of the Ombudsman, and outreach priorities and strategies.²²⁴

²²⁴ ICANN Office of the Ombudsman, 2007, **Response to the Board Governance Committee Concerning: The Ombudsman Framework** (internal document) p4

6.5.15 Active Public Relations Campaign – Community Education

The bylaws state that the Ombudsman shall, “heighten awareness of the Ombudsman programme and functions through routine interaction with the ICANN community and online availability.”²²⁵ In the future, the Office will work in concert with newly and soon to be appointed staff and executives to develop a more fulsome approach to strategic outreach. This will likely include such activities as a web blog. There will also be an emphasis on linkage with the regional managers to target civil society and government officials across the globe.

6.5.16 Structural Autonomy and Accountability

ICANN’s Bylaw V and the ICANN organisational chart (shown in Figure 6.1) show that the Ombudsman is autonomous in his relationship with ICANN. The ICANN Board has developed a set of Ombudsman Management Principles. Like the Ombudsman Framework, workable changes to this document have been stalled at the Board Governance Committee for some time. In October 2005, after a full year in operation, the Ombudsman conducted a review of the Ombudsman Framework and produced a revised document that more accurately reflected the actual working environment.

²²⁵ ICANN, 2006, **Bylaw V**, <http://www.icann.org/general/archive-bylaws/bylaws-28feb06.htm#V> (accessed January 28, 2007) s.3.4; As previously noted in 6.5.9, the Ombudsman has an active Outreach program.

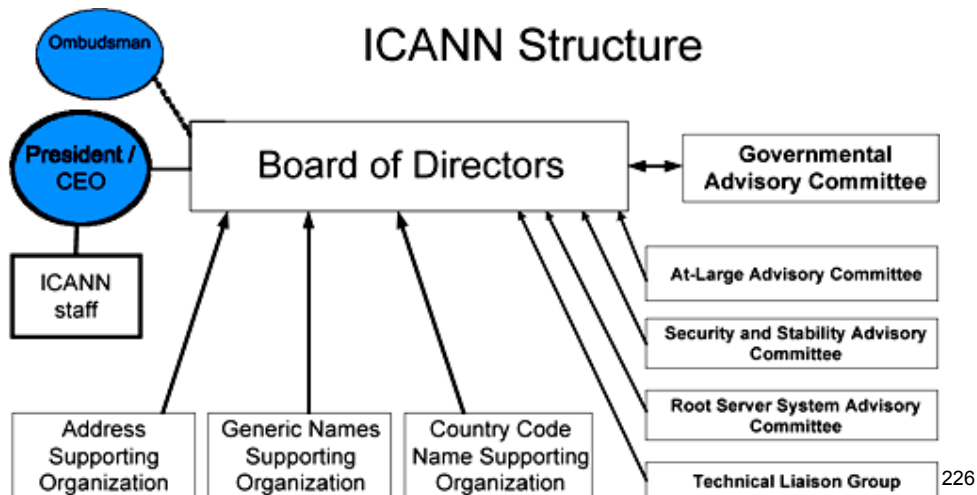


Figure 6.1 – ICANN Organisational Structure

The Ombudsman is an independent officer of ICANN and is accountable to the Board and its several committees for his actions as set out in the bylaws. This accountability is at an arm's length and does not permit supervision of the function.

6.5.17 Filing System

As the Ombudsman is an online dispute resolver, the vast majority of correspondence is electronic. A filing system based on the year and chronological number of the contact or complaint is used. For filing purposes, files had been stored in Microsoft® Outlook by year, month, and file number for ease of handling. The Outlook system is password protected. In September 2007, the ICANN Ombudsman instituted a specially designed case management system called Seemore. Designed to the Ombudsman's specifications, Seemore provides a web-based system that allows the complainant or the organisation a limited view of the correspondence thorough a client portal.

²²⁶ ICANN Office of the Ombudsman, 2005, **Results-based Management Accountability Framework**, <http://www.icann.org/ombudsman/documents/rmaf-08feb05.pdf> (accessed January 28, 2007) p3

A monthly narrative report is provided to the Board. Through Seemore, the Board now has access to a reporting functionality, and they can create a statistical breakdown of complaint by roster, country of origin, and outcomes, as well as outreach activities. This file management leads to statistical compilations for the annual report. This filing system also keeps track of the generic subject matter of the complaints (i.e., Ombuds jurisdiction, registry, registrar, and Whois, among many others) and the method of closing (i.e., resolved, referral, no further action required, systemic improvement, and so forth).

A simple paper file system is in place in the Marina del Rey facility for both investigative and administrative files. Ombudsman files are kept in locked cabinets in a separate and locked office.

6.5.18 Database

The Office of the Ombudsman contracted for the development of a database case management system (Seemore) designed for the specific requirements of this Office. The system has been completed, and has been populated with the nearly 2400 files the Office has dealt with since its inception. The case management system will be interfaced with a secure ICANN server to provide for data protection and privacy. The Ombudsman will be able to allow access to certain reporting functionalities to the Board and ICANN executives to permit individual queries on reports of nonconfidential material (i.e., a Board member will be able to search out the number of specific contacts from a specific country, or with a specific theme, in a specific time period).

6.5.19 Balanced Time Management

Russell develops the idea of balanced time management by requiring “a sound time management strategy that incorporates time for complaint taking, complaint investigation and constituency development.”²²⁷ The ICANN Office of the Ombudsman basically conducts work in three silos: the investigation and resolution of complaints; administration; and outreach (doing the work, writing up the work, and telling people about the work the Ombuds does).

As the Ombudsman’s primary office space is a home office in British Columbia, a travel schedule to the Marina del Rey facility was developed that balances the need to be in the central office with the Ombudsman’s independence and fiscally responsible travel. This means that the Ombudsman spends six to nine working days per month in Marina del Rey. The Ombudsman also travels to the semester ICANN meetings and attends conferences and training offered by the several ombudsman bodies previously mentioned. In fiscal year 2005–2006 the ICANN Ombudsman was on travel status for 142 days.

6.5.20 Reporting Relationship with the Advisory and Budget Group

The relationship with the Board’s several committees was discussed at 6.5.14. The Ombudsman is required to provide an annual report, and also provides the Board with a monthly report to provide feedback on trend analysis and Ombudsman activities and to draw attention to systemic issues as they present themselves. No formal feedback loop exists between the Board and the Ombudsman, but the newest contractual agreement calls for a

²²⁷ Russell, Rick, (date unknown) **Creating the Office of the Ombudsman**, <http://www.agreeinc.com/ombudsman.html> (accessed January 27, 2007)

performance bonus, which necessarily means that some degree of reporting back to the Ombudsman will occur.

Under Bylaw V, the Ombudsman is responsible for developing and submitting an annual budget, which goes to the Board for approval without any administrative changes. While ICANN's president may make comments to the Board on the budget, this did not occur in the first two fiscal years of operation. The Board, at its discretion, approves the Ombudsman budget in the consideration of the ICANN budget as a whole.

There is a limited feedback process from the chief financial officer to the Ombudsman on budgetary performance. Except for the year-to-date expenses reported in the draft budget to the Board, the Ombudsman is not provided any financial reports. A recent change of chief financial officer has lead to an improvement in this relationship and reporting processes.

In fiscal year 2005–2006, the Office of the Ombudsman had a surplus due to a lack of spending in such areas as translation and investigative expenses. In fiscal year 2006–2007 the Office was in a deficit due to salary back pay and adjustments dating from the end of fiscal year 2004–2005.

6.5.21 Review of Start-up Policy – Terms of Reference

The Office of the Ombudsman has produced a results-based management accountability framework (RMAF)²²⁸. The RMAF (see Appendix 2) is an evaluation and review framework for the Office based on ongoing, formative, and summative reviews. These ongoing reviews, along with a specific review of the Ombudsman Framework, have been completed. At the end of 2005, a

²²⁸ ICANN Office of the Ombudsman, 2005, **Results-based Management Accountability Framework**, <http://www.icann.org/ombudsman/documents/rmaf-08feb05.pdf> (accessed January 28, 2007)

thorough review of the framework was conducted, and a number of changes and improvements were recommended to the Board Governance Committee for ratification. To date these have not yet been approved.

The framework was reviewed by an ISO evaluator and has been compared with the ISO Standard 10003.²²⁹ These internal and external reviews may provide evidence that the Ombudsman framework documents reflect the operational reality of the work.

6.4.22 Independence

A hallmark of an ombudsman's office is that it is independent of the entity that it serves, whether an internal ombudsman who deals with staffing issues, or a classical ombudsman dealing with government operations. It is generally agreed that in order to function properly, the ombudsman must be independent. Items 6.5.26 through 6.5.35, which follow, review specific barometers of independence.

The American Bar Association defines independence in these terms:

Independence. The ombuds is and appears to be free from interference in the legitimate performance of duties and independent from control, limitation, or a penalty imposed for retaliatory purposes by an official of the appointing entity or by a person who may be the subject of a complaint or inquiry. In assessing whether an ombuds is independent in structure, function, and appearance, the following factors are important: whether anyone subject to the ombuds's jurisdiction or anyone directly responsible for a person under the ombuds's jurisdiction (a) can control or limit the ombuds's performance of assigned duties or (b) can, for retaliatory purposes, (1)

²²⁹ See Chapter Four.

eliminate the office, (2) remove the ombuds, or (3) reduce the budget or resources of the office.²³⁰

Analysis of Items 6.5.26 through 6.5.35 indicates that the ICANN Ombudsman is independent. Through provisions and declarations in the bylaws, such as the setting of budgets and reporting relationships, to practical matters of booking travel or selecting contractors, the Ombudsman is an independent officer of the organisation.

Independence is a cited value in the Ombudsman Value Statement in Appendix 4,²³¹ and is constantly conveyed in Ombudsman correspondence and written documentation. The value statement states, “The Office of the Ombudsman, in order to remain an impartial officer, will remain independent of normal ICANN Structures.”

6.5.23 Impartiality and Fairness

The Office of the Ombudsman has developed a value statement, as noted in 6.5.22, and one of the five values found in that statement is impartiality:

In each and every situation, the Office of the Ombudsman will receive information from the community with no predisposed idea as to the outcome of the Alternative Dispute Resolution process, and without favoring any party in the process.²³²

The American Bar Association defines impartiality as: “The ombuds conducts inquiries and investigations in an impartial manner, free from initial bias and conflicts of interest. Impartiality does not preclude the ombuds from developing an interest in securing changes that are deemed necessary as a

²³⁰ American Bar Association, 2004, **Standards for the Establishment and Operation of Ombuds Offices**, <http://www.abanet.org/adminlaw/ombuds/115.pdf> (accessed October 30, 2006) p3

²³¹ ICANN Office of the Ombudsman, 2006, **The Values of this office are:**, <http://www.icann.org/ombudsman/articles/value-statement.pdf> (accessed January 28, 2007)

²³² Ibid

result of the process, nor from otherwise being an advocate on behalf of a designated constituency.”²³³

The Office of the Ombudsman uses the Code of Administrative Justice²³⁴ written by the British Columbia Ombudsman as its analytical basis to determine whether fairness principles are being breached by the organisation. This document codifies 16 common administrative issues and defines how they are unfair. The code is widely accepted in the ombudsman community as a foundation document in the field. In reports written to the Board from the Office of the Ombudsman, the relevant fairness issue is quoted and used as an example for the Board’s reference.

Criteria 6.5.36 to 6.5.42 explore impartiality and fairness in greater detail.

6.5.24 Credibility of the Review Process

While the decisions and recommendations of the Ombudsman are normally not subject to appeal or review, it is a testament to the whole body of the Ombudsman’s work if the review process undertaken has credibility in the eyes of a third party. It appears that the ICANN Ombudsman has ensured, to the extent possible, that he conducts investigations and reviews with credibility.

There are a number of indicators for the criteria. First, the Office of the Ombudsman has submitted its process for evaluation by an International Standards Organisation examiner with respect to ISO Standard 10002 on

²³³ American Bar Association, 2004, **Standards for the Establishment and Operation of Ombuds Offices**, <http://www.abanet.org/adminlaw/ombuds/115.pdf> (accessed October 30, 2006) p3

²³⁴ British Columbia Ombudsman, 2003, **Special Report 42, Code of Administrative Justice**, http://www.ombud.gov.bc.ca/reports/Public_Reports/Public%20Report%2042.pdf (accessed October 30, 2006)

complaint handling. The Ombudsman was found to be compliant with the standard.²³⁵

Second, those who have accessed the system have lodged no complaints that the Ombudsman's review was not a fair and full process. However, as previously noted, a very few complaints stated that the range of the Ombudsman's mandate was not sufficient, but this is not the same as saying that the process taken within the given mandate was not full and fair.

Third, there has been no commentary in the media or the online community criticizing the Ombudsman in this regard. Criteria 6.5.43 to 6.5.49 review this topic in more detail.

6.5.25 Confidentiality

Confidentiality is the third key element of ombudsmanship. Complaints which are brought to the attention of the ombudsman should be dealt with in private and with a minimum of involvement from parties within the organisation.

ICANN as an institution and the Office of the Ombudsman have created policy concerning confidentiality. The United States Ombudsman Association defines confidentiality as:

The Ombudsman should have the privilege and discretion to keep confidential or release any information related to a complaint or investigation. This standard balances the need to protect sensitive information so that a complainant can come forward, and

²³⁵ See Appendix 3

witnesses and subjects can speak openly, with the need to disclose information as a part of an investigation or public report.²³⁶

Bylaw V, Article 4.2 states, “ICANN staff and other ICANN participants shall observe and respect determinations made by the Office of Ombudsman concerning confidentiality of any complaints received by that Office.”²³⁷

The ICANN Office of the Ombudsman expresses itself on confidentiality in two places. First, the Ombudsman Value Statement:

All parties, both within the community and ICANN, bringing information to the attention of the Ombudsman should feel assured that the information will be held in confidence, except where it is necessary to help resolve the complaint.²³⁸

The Ombudsman Framework indicates:

All matters brought before the Ombudsman shall be treated as confidential. The Ombudsman shall only make enquiries, or advise staff and Board members at ICANN of the existence and identity of a complainant in order to further the resolution of the complaint. ICANN staff and Board members are to hold the existence of a complaint and the identity of a complaint as confidential, except to further the resolution of a complaint.

In general terms, due to the very nature of the work of the Office of the Ombudsman, the Ombudsman will resist testifying in any process which would reveal informal,

²³⁶ United States Ombudsman Association, 2003, USOA Governmental Ombudsman Standards, http://www.usombudsman.org/documents/PDF/References/USOA_STANDARDS.pdf (accessed June 13, 2007) p2

²³⁷ ICANN, 2006, **Bylaw V**, <http://www.icann.org/general/archive-bylaws/bylaws-28feb06.htm#V> (accessed January 28, 2007)

²³⁸ ICANN Office of the Ombudsman, 2006, **The Value of this office are:**, <http://www.icann.org/ombudsman/articles/value-statement.pdf> (accessed January 28, 2007)

confidential information given to the Ombudsman during the course of an investigation.²³⁹

Once the ADR or investigative process is completed and the complainant receives the Ombudsman's closing correspondence, confidentiality may be broken by the complainant. There have been a few occasions on which complainants have posted correspondence between the Ombudsman and themselves, and those documents would have been considered confidential within ICANN. It is the Office's practice to offer no commentary or to even acknowledge the existence of a complaint in such circumstances.

Criteria 6.5.50 and 6.5.51 further review confidentiality.

6.5.26 Independence – Established by a Higher Jurisdiction

The ICANN Ombudsman was established not by policy but by a motion of the Board of Directors to amend the bylaws. This was the last of the ICANN reforms put into place as a result of the 2002 Evolution and Reform Committee's (ERC) work. The other complaint mechanism developed as a result of the ERC is the independent review process, a formal ADR process.

6.5.27 Independence – Separate from the Organisation it Reviews

Bylaw V makes a number of mentions of independence. It also allows the Ombudsman to develop his own budget apart from the organisation. The Ombudsman is physically housed in a home office independent from the entity. The Ombudsman is not treated as an employee of ICANN, but rather

²³⁹ ICANN Office of the Ombudsman, 2005, **Ombudsman Framework** <http://www.icann.org/ombudsman/documents/ombuds-frmrk-eng-20jun05.pdf> (accessed January 28, 2007) p3

as an independent contractor. The Ombudsman has no formal reporting or supervisory relationships with ICANN.

6.5.28 Independence – Appointed by a Supermajority

The Ombudsman is appointed by the Board of Directors, by ballot vote. There is no indication in Bylaw V whether that is by a simple majority or a supermajority of the members.

6.5.29 Independence – Long Fixed Term – Reappointment Possible

Bylaw V, Article 1.2 indicates that the Ombudsman is appointed for an initial term of two years, which is renewable. That two years is now complete, and the incumbent has been reappointed. Under the proposed contract between the Board and the incumbent, the Ombudsman would be reappointed for a three-year term, two years fixed, one year optional, and this contract would be renewable.

6.5.30 Independence – For Cause Removal by Supermajority

The bylaws state that the Ombudsman can be subject to dismissal only by a 75% vote of the Board. However, the bylaws do not state in what circumstances it may exercise this authority.

6.5.31 Independence – High Fixed Salary

The Ombudsman has undergone a salary review by the Board Compensation Committee with input from the head of human resources. The Ombudsman is paid a high salary in comparison to the salaries paid to other professionals at ICANN, fixed by contract, with the possibility of a bonus. To date, the criteria for the bonus have not been established, although it would be unlikely that

any negative criticism by the Ombudsman would reduce the benefit, as that in and of itself would cause further criticism.

6.5.32 Independence – Appropriate Budget – Accountability of Spending

As previously noted, the bylaws provide that the Ombudsman develop and submit his budget, and that budget cannot be altered by administrative process. The Ombudsman is accountable for managing the resources provided by the budget.

6.5.33 Independence – Sole Authority to Hire Staff

The ICANN Ombudsman is a sole practitioner. However, staffing has taken place for an adjunct ombudsman, who has been remunerated for one month a year to cover for absences during the Ombudsman's annual and any sick leave. The adjunct was hired under sole authority of the Ombudsman, as were any contractors, including translators, outside counsel, or evaluators. However, in FY 2007 – 2008, the Ombudsman was not provided with resources to continue the adjunct's contract.

6.5.34 Independence – Someone Can Always Exercise the Ombudsman's Role

Again, as a sole practitioner, the Ombudsman exercises those authorities found in Bylaw V. The adjunct ombudsman may exercise those roles when and as prescribed by the Ombudsman. The Seemore web-based case management system enables the Ombudsman or the adjunct to conduct investigations at any time and from any location.

6.5.35 Independence – Decisions not Reviewable

Decisions or recommendations by the Ombudsman are not reviewable. The initial subject matter of the complaint may become the subject of formal review processes within ICANN, through either the Board Reconsideration Request or the Independent Review Process, as the person raising the original complaint with the Ombudsman may request redress from these processes if the complaint meets the requirements set out in the bylaws.

6.5.36 Impartiality and Fairness – Qualifications

The American Bar Association states that, “An ombuds should be a person of recognised knowledge, judgment, objectivity, and integrity. The establishing entity should provide the ombuds with relevant education and the periodic updating of the ombuds’s qualifications.”²⁴⁰ The United States Ombudsman Association states that, “The Ombudsman should be qualified to analyze issues and matters of law, administration, and policy.”²⁴¹ The ICANN Ombudsman appears to be qualified for the position²⁴²

6.5.37 Impartiality and Fairness – Supermajority to Remove

The bylaws state that the Ombudsman can be subject to dismissal only by a 75% vote of the Board.²⁴³

6.5.38 Impartiality and Fairness – No Conflict of Interest in Activities

The United States Ombudsman Association states:

²⁴⁰ American Bar Association, 2004, **Standards for the Establishment and Operation of Ombuds Offices**, <http://www.abanet.org/adminlaw/ombuds/115.pdf> (accessed October 30, 2006) p3

²⁴¹ United States Ombudsman Association, 2003, **USOA Governmental Ombudsman Standards**, http://www.usombudsman.org/documents/PDF/References/USOA_STANDARDS.pdf (accessed June 13, 2007) p8

²⁴² ICANN Office of the Ombudsman, 2005, **Frank Fowlie Biography** <http://www.icann.org/biog/fowlie.htm> (Accessed January 28, 2007)

²⁴³ See 6.4.30

The Ombudsman absents himself or herself from involvement in complaints where a conflict of interest or the appearance of a conflict of interest may exist.

a) If the Ombudsman does receive a complaint with which there is a potential for a conflict of interest or the appearance of a conflict of interest, the Ombudsman must remove himself or herself completely from that complaint and turn it over to a staff member or other party for appropriate action.

b) It must be understood that the Ombudsman will not interfere in any investigation or the production or publication of recommendations.²⁴⁴

Both the bylaws and the Ombudsman's employment contract indicate that he is to follow conflict of interest policies and not engage in activities that could create a real or perceived conflict.

6.5.39 Impartiality and Fairness – Direct Access to Ombudsman – No Fee Charged

Persons who contact the Ombudsman do so by use of a set of contacts and complaints forms, via a secure mail server and the Seemore case management system. Contacts and complaints come directly to the Ombudsman and to no other party. When the Ombudsman is on leave the incoming mail is copied to the adjunct so that he can initiate action. Neither ICANN nor the Ombudsman charges a fee for lodging a complaint. However, the complainant is necessarily responsible for their connectivity and computer expenses.

²⁴⁴ United States Ombudsman Association, 2003, USOA Governmental Ombudsman Standards, http://www.usombudsman.org/documents/PDF/References/USOA_STANDARDS.pdf (Accessed June 13, 2007) p6

6.5.40 Impartiality and Fairness – Power of Recommendations and Public Criticism

The United States Ombudsman Association states:

The Ombudsman should have the authority and responsibility to publish findings, recommendations, and reports.

- a) It can be seen as a duty of the Ombudsman to make the public aware of investigation results to promote accountability.
- b) If the results of an investigation and an Ombudsman's recommendations cannot be publicized, the function of the Ombudsman as a watchdog for the public interest is frustrated.
- c) Identifying information of complainants and witnesses can be changed to protect confidentiality.²⁴⁵

Both the bylaws²⁴⁶ and the Ombudsman Framework²⁴⁷ empower the Ombudsman to make recommendations to the organisation regarding complaints, to offer suggestions to resolve them, or to report an inability to resolve them. Both documents allow for the posting of these reports on the website and later in the annual report. To date the Ombudsman has made several recommendations in both fiscal years. These have been reported on in the annual reports on a generic basis, and public criticism has not been required to resolve the issues. The recommendations have been reported on

²⁴⁵ United States Ombudsman Association, 2003, USOA Governmental Ombudsman Standards, http://www.usombudsman.org/documents/PDF/References/USOA_STANDARDS.pdf (accessed June 13, 2007) p10

²⁴⁶ ICANN, 2006, **Bylaw V**, <http://www.icann.org/general/archive-bylaws/bylaws-28feb06.htm#V> (accessed January 28, 2007), Article 4.4

²⁴⁷ ICANN Office of the Ombudsman, 2005, **Ombudsman Framework** <http://www.icann.org/ombudsman/documents/ombuds-frmrwk-eng-20jun05.pdf> (accessed January 28, 2007) p5 "Powers of the Ombudsman"

generically as the circumstances of the complaints and the volume of complaints received to date would otherwise make it impossible to protect the confidentiality of the process and the complainants.

ICANN is not bound to follow the recommendations of the Ombudsman. However, it is incumbent upon the Ombudsman to properly investigate the subject matter of the complaint and to put forward only recommendations that redress the subject matter of the complaint and that can be achieved. The only sanction for not following the Ombudsman's recommendations is the adverse public reaction from failing to do so.

6.5.41 Impartiality and Fairness - Required to Consult on Adverse Findings

The United States Ombudsman Association standards provide that, "The subjects of the Ombudsman's reports should be consulted and afforded the opportunity to respond to the report prior to its being published."²⁴⁸ The ICANN Ombudsman is required to consult with the organisation when there is an adverse finding through a number of vehicles. First, the revised Ombudsman Framework states:

Internal Fairness Procedure

Upon the completion of any report requiring a notification or recommendation to the Board of Directors, the Ombudsman will first provide any person who may be affected by the report an opportunity to respond to the report and provide feedback. The Ombudsman will consider feedback generated by the Internal Fairness Procedure in the preparation of a final report to the Board. Parties shall respond within 10 business

²⁴⁸ United States Ombudsman Association, 2003, USOA Governmental Ombudsman Standards, http://www.usombudsman.org/documents/PDF/References/USOA_STANDARDS.pdf (accessed June 13, 2007) p10

days or, if necessary, request an extension from the Office of the Ombudsman, within that time period. Nil returns will be considered to be an indication of a lack of disagreement with the report.²⁴⁹

The Ombudsman Framework also requires the Ombudsman to advise the Board of Directors as soon as he determines that there has been a serious breach of administrative fairness.²⁵⁰ Finally, once a formal report is filed with the Board, a period of 60 days following the next Board meeting is provided to the organisation to prepare a response.

6.5.42 Impartiality and Fairness – Ombuds is an Advocate for Fairness, not the Parties

Bylaw V states, “The Ombudsman shall serve as an objective advocate for fairness ...”²⁵¹ The Ombudsman, in practice, acts as an independent third party with a fact finding and Alternative Dispute Resolution function. The Ombudsman does not act as an advocate for either the organisation or the complainant. The Ombudsman does act as an advocate for the standards of administrative fairness as found in the BC Ombudsman’s Code of Administrative Justice.²⁵²

6.5.43 Credible Review – Broad Jurisdiction

The Ombudsman’s mandate established in the bylaws relates to complaints of unfair or inappropriate treatment with respect to actions, decisions, or

²⁴⁹ ICANN Office of the Ombudsman, 2005, **Ombudsman Framework** <http://www.icann.org/ombudsman/documents/ombuds-frmwk-eng-20jun05.pdf> (accessed January 28, 2007) p7

²⁵⁰ See British Columbia Ombudsman, 2003, **Special Report 42, Code of Administrative Justice**, http://www.ombud.gov.bc.ca/reports/Public_Reports/Public%20Report%2042.pdf

²⁵¹ ICANN, 2006, **Bylaw V**, <http://www.icann.org/general/archive-bylaws/bylaws-28feb06.htm#V> (accessed January 28, 2007), Section 2

²⁵² See British Columbia Ombudsman, 2003, **Special Report 42, Code of Administrative Justice**, http://www.ombud.gov.bc.ca/reports/Public_Reports/Public%20Report%2042.pdf

inactions by the ICANN Board, staff, or supporting organisations. This is a broad mandate and is not restricted to particular realms or silos of organisational activity. The Ombudsman’s jurisdiction does not apply to the following: internal administrative matters, personnel matters, issues relating to membership on the Board, or issues related to vendor/supplier relations.²⁵³

6.5.44 Credible Review – No Parties Exempt from Complaining

There is nothing in the bylaws, the Ombudsman Framework, or the conditions of employment for ICANN limiting any person from making a complaint. The only jurisdictional issue relates to the fact that complaints must be made by the person primarily affected by the act, decision, or inaction, and that the complainant has sufficient personal interest in it. For the few complaints in which the complainant was acting on behalf of another party, the Ombudsman has declined jurisdiction.

While no person is exempt from complaining, not all complaints may be accepted by the Ombudsman. The subject matter of the complaint must be related to an ICANN staff, Board, or supporting organisation act, decision, or inaction.²⁵⁴

6.5.45 Credible Review – Organisation not Permitted to Impede

Bylaw V, Section 4.1 states, “No ICANN employee, Board member, or other participant in Supporting Organisations or Advisory Committees shall prevent or impede the Ombudsman’s contact with the ICANN community (including employees of ICANN).” Section 4.2 says, “ICANN staff and other ICANN participants shall observe and respect determinations made by the Office of

²⁵³ ICANN, 2006, **Bylaw V**, <http://www.icann.org/general/archive-bylaws/bylaws-28feb06.htm#V> (accessed January 28, 2007) s3.2

²⁵⁴ See 6.4.53

Ombudsman concerning confidentiality of any complaints received by that Office.”²⁵⁵

6.5.46 Credible Review – Grounds for Review Are Broad, and Focus on Fairness

The Ombudsman can receive and investigate complaints relating to acts, decisions, or inactions by the Board, staff, or supporting organisations. The role of the Ombudsman is to determine whether there has been unfairness, and to use ADR techniques to resolve it. It is not the role of the Ombudsman to assess legality or to assign value to compensation for redress.²⁵⁶ It is the role of the Ombudsman to make recommendations which would prevent further similar unfairness in the future. The bylaws state, “The principal function of the Ombudsman shall be to provide an independent internal evaluation of complaints by members of the ICANN community who believe that the ICANN staff, Board or an ICANN constituent body has treated them unfairly.”²⁵⁷

6.5.47 Credible Review – Reports Problems and Recommendations, Has Ability to Publish

As with indicator 6.5.40, where the ability to act impartially and fairly can be demonstrated by external reporting, this indicator is also a factor in demonstrating that the Ombudsman can credibly conduct reviews. If the Ombudsman were to never identify problems or make recommendations

²⁵⁵ ICANN, 2006, **Bylaw V**, <http://www.icann.org/general/archive-bylaws/bylaws-28feb06.htm#V> (Accessed January 28, 2007) s 4

²⁵⁶ American Bar Association, 2004, **Standards for the Establishment and Operation of Ombuds Offices**, <http://www.abanet.org/adminlaw/ombuds/115.pdf> (accessed October 30, 2006) p11
“Appropriate subjects for an ombuds to review include allegations of unfairness, maladministration, abuse of power, abuse of discretion, discourteous behavior or incivility, inappropriate application of law or policy, inefficiency, decision unsupported by fact, and illegal or inappropriate behavior.”

²⁵⁷ ICANN, 2006, **Bylaw V**, <http://www.icann.org/general/archive-bylaws/bylaws-28feb06.htm#V> (accessed January 28, 2007) s2

based on complaints from the community, it could be assumed that the organisation was either misled in its need to have an ombuds function, or that investigations were not conducted with depth or professionalism. There have been a number of investigations where the ICANN Ombudsman has reported problems, identified the need for systemic change, and made recommendations for redress.²⁵⁸

6.5.48 Credible Review – Findings not Reviewable

Consistent with indicator 6.5.35, ICANN Ombudsman findings are not reviewable. At the end of an investigation, the Ombudsman must not only provide findings but also provide reasons for the findings. Obviously, the findings and the reasoning behind them are supported by a credible review process. Applying the rules of natural justice,²⁵⁹ both the organisation and the complainant can bring forward information at any point which could assist the decision maker, the Ombudsman, in making a finding. These may be exchanged between the parties at the Ombudsman's discretion. If a complainant believes that the findings or the reasoning used is based on incomplete facts, he or she may transmit them to the Ombudsman for review. The Ombudsman's findings, except for his own additional review respecting the rules of natural justice, are not reviewable by any other structure in ICANN. However, the complainant may access formal dispute resolution processes or the courts to attempt resolution of the substantive matter only, but not the Ombudsman's findings.

²⁵⁸ See <http://www.icann.org/ombudsman/reports.html>

²⁵⁹ See 6.5.3

6.5.49 Credible Review – Ombuds Cannot Make Binding Orders

The Ombudsman is authorized to conduct investigations and to use a wide variety of alternative dispute resolution techniques to provide redress if an unfairness has occurred. The Ombudsman does not have the authority to compel the Board, staff, or supporting organisations to take any step or measure, or to introduce a change to bylaws or policies. At the end of an investigation or ADR process, if the Ombudsman feels it necessary, he may make recommendations to the Board. The Board is asked to respond with 60 days following the next Board meeting with the actions it will or will not take, and to supply reasons, as a matter of internal fairness, why it cannot act. The Ombudsman then may use the power to publicly criticize as his sole power of moral suasion in resolving issues to bring the issue to the attention of the community. This power may be exercised by posting information on the Ombudsman website, by public reporting through the annual report, and by advising the complainant of the lack of implementation.

6.5.50 Confidentiality – Ombudsman Has Power to Decide Level of Information to Be Disclosed

The United States Ombudsman Association opines that the ombudsman must have the power to decide on the level of confidentiality applied conducting ombudsman enquiries. “In most situations, it should be the Ombudsman who determines whether or not confidentiality will be offered to a complainant, agency employee, or witness.”²⁶⁰

²⁶⁰ United States Ombudsman Association, 2003, USOA Governmental Ombudsman Standards, http://www.usombudsman.org/documents/PDF/References/USOA_STANDARDS.pdf (accessed June 13, 2007) p7

The bylaws²⁶¹ indicate clearly that the Ombudsman shall determine the confidentiality of complaints. The Ombudsman Framework indicates that the Ombudsman may only make enquiries or reveal the identity of a complainant in order to further the resolution of a complaint.

6.5.51 Confidentiality – Ombudsman Will Resist Testifying

The Ombudsman Framework indicates:

In general terms, due to the very nature of the work of the Office of the Ombudsman, the Ombudsman *will resist* testifying in any process which would reveal informal, confidential information given to the Ombudsman during the course of an investigation.^{262 263}

The United States Ombudsman Association states that, “The Ombudsman should not be compelled to testify or to release records.”²⁶⁴ The ICANN Ombudsman closely monitors the developments within the United States Ombudsman Association, International Ombudsman Association, and the Forum of Canadian Ombudsman. There are continuing developments in shield laws, statutory protections, and jurisprudence. At this time, the Ombudsman is unaware of any particular issues relating to executive ombudsman functions, although one could imagine a scenario where a complainant has entered into a lawsuit and attempted to have the ICANN

²⁶¹ ICANN, 2006, **Bylaw V**, <http://www.icann.org/general/archive-bylaws/bylaws-28feb06.htm#V> (accessed January 28, 2007) s4.2

²⁶² ICANN Office of the Ombudsman, 2005, **Ombudsman Framework** <http://www.icann.org/ombudsman/documents/ombuds-frmwrk-eng-20jun05.pdf> (accessed January 28, 2007) p6

²⁶³ “The only exception to this privilege of confidentiality is where there appears to be imminent risk of serious harm, and where there is no other reasonable option.” International Ombudsman Association, 2007, **IOA Standards of Practice**, http://www.ombudsassociation.org/standards/Code_Ethics_1-07.pdf (accessed April 5, 2007)

²⁶⁴ United States Ombudsman Association, 2003, **USOA Governmental Ombudsman Standards**, http://www.usombudsman.org/documents/PDF/References/USOA_STANDARDS.pdf (accessed June 13, 2007) p7

Ombudsman testify. The Ombudsman would resist testifying. In such a case, the Ombudsman would be represented at a court process either by independent counsel or by the ICANN Office of the General Counsel, and in consultation with the United States Ombudsman Association and the International Ombudsman Association.

6.5.52 Broad Range of Enquiry Available

The ICANN Ombudsman has the authority to investigate a broad range of issues. This is discussed in indicators 6.5.43 and 6.5.46.

6.5.53 Discretionary Power to Refuse Complaints and to Publicize

Discretionary powers to refuse complaints are found in the bylaws and the Ombudsman Framework. The bylaws at s. 3.2 state that the Ombudsman shall:

... exercise discretion to accept or decline to act on a complaint or question, including by the development of procedures to dispose of complaints that are insufficiently concrete, substantive, or related to ICANN's interactions with the community so as to be inappropriate subject matters for the Ombudsman to act on.²⁶⁵

The Ombudsman Framework states:

The Ombudsman may decline jurisdiction over a complaint in the following circumstances:

- The person making the complaint knew, or ought to have known of the decision, recommendation, act, or omission to which the complaint refers more than 60 days before the complaint was received by the Ombudsman;

²⁶⁵ ICANN, 2006, **Bylaw V**, <http://www.icann.org/general/archive-bylaws/bylaws-28feb06.htm#V> (accessed January 28, 2007) s3.2

- The subject matter of the complaint primarily affects a person other than the complainant and the complainant does not have sufficient personal interest in it;
- The complaint is repetitive, trivial, vexatious, frivolous, non-substantive, otherwise abusive, or not made in good faith;
- Having due regard for all the circumstances, further action by the Ombudsman is not necessary to resolve the complaint;
- The complaint is abandoned; or is withdrawn in writing by the complainant;
- The complainant revokes the ADR process by engaging in either a formal review process under Article IV of the Bylaws; or engages in an outside legal process.²⁶⁶

The USOA provides the following as examples of where an ombudsman may refuse to act on a complaint: "... the case is outside the Ombudsman's jurisdiction, the complainant has other available remedies, the complaint is made in bad faith or is vexatious, the complaint is trivial, the complainant will not provide information necessary to conduct an investigation, the office lacks sufficient resources, or the issue has been previously investigated."²⁶⁷ If the ICANN Ombudsman declines jurisdiction, or if the complaint does not relate to an ICANN act, decision, or inaction, the Office will always try to assist by acting as a single portal for complainants, and by providing appropriate referrals to persons or agencies which may be able to assist the complainant. For example, the ICANN Ombudsman frequently receives complaints concerning the contractual relationship between domain name owners and

²⁶⁶ ICANN Office of the Ombudsman, 2005, **Ombudsman Framework** <http://www.icann.org/ombudsman/documents/ombuds-frmwk-eng-20jun05.pdf> (accessed January 28, 2007) p4

²⁶⁷ United States Ombudsman Association, 2003, USOA Governmental Ombudsman Standards, http://www.usombudsman.org/documents/PDF/References/USOA_STANDARDS.pdf (accessed June 13, 2007) p11

their registrars. These do not involve an ICANN action, decision, or inaction, but rather a commercial agreement. These cases are referred to the ICANN registrar liaison team as the substantive issue is a matter of dispute between a registrar and registrant. The liaison manager informs the registrar of the complaint and notifies the complainant of the appropriate contact information for the registrar.

6.5.54 Identify Complaint Patterns and Trends

The Seemore case management system enables the Ombudsman to identify trends which affect not only the organisation but also issues of dispute with registrars and country code top-level domains. By monitoring complaint intake information, the Ombudsman can determine any commonalities in the data. This trend analysis points out not only business areas where complaints are received but also the nature of the complaints such as unreasonable delays. This trend analysis has been of assistance to the ICANN registrar liaison team in monitoring complaints about specific registrars. It has also pointed out certain systemic issues within ICANN.

6.6 Summary

This chapter uses information in the literature to assist in understanding the establishment and functioning of Ombudsman operations. The chapter sets out to look at the literature and determine three things:

- Define evaluation criteria;
- Construct logical standards during the evaluation; and
- Determine which criteria and standards are most likely to be critical in the practice of ombudsmanship.

The self-evaluation tool developed in this chapter does not constitute a solitary – imposed approach, where all ombudsman schemes submit to each and all of the evaluations techniques. Rather, practitioner may use or reject the questions as is appropriate for the operation, capacity, and budget of the ombudsman's operation.

The chapter used the ICANN Office of the Ombudsman as a test case for the application of the criteria identified in the literature. Based on the entirety of the 54 criteria, it appears that the ICANN Office of the Ombudsman is meeting the standards that would be expected by an organisation or government body for an ombudsman programme.

By defining criteria and sub-criteria for analysis, this chapter has assisted in developing a tool for ombudsman evaluation. This self evaluation tool is a key component in the evaluation blueprint developed by this dissertation.

Appendix Six, Fifty Questions for Self-Evaluation, is the evaluation tool developed from the 54 criteria identified in this research.

Chapter Seven

Statistical Comparisons

7.1 Introduction

Figures often beguile me, particularly when I have the arranging of them myself; in which case the remark attributed to Disraeli would often apply with justice and force:

“There are three kinds of lies: lies, damned lies and statistics.”²⁶⁸

The purpose of this chapter is to conduct an evaluation of the test case for this research, the ICANN Office of the Ombudsman, to determine whether meaningful information, comparisons, or efficiencies can be identified by comparing publically available information about the test case against other ombudsman operations. The chapter reports on a quantitative analysis conducted between the ICANN Office of the Ombudsman and other ombudsman operations in an attempt to develop information on the overall operations of the ICANN Ombudsman.

For quantitative evaluation purposes, it is helpful to examine similar items to reveal differences or similarities among the items studied. Druckman calls these comparative data sets.²⁶⁹ As has been noted elsewhere in this research, there are three types of ombudsman programmes: classical, executive, and organisational. Of these, executive ombudsman programmes are the least populous and therefore direct comparators for the ICANN Office of the Ombudsman are difficult to obtain.

²⁶⁸ Twain, Mark, **Autobiography of Mark Twain**, quoted at: <http://www.twainquotes.com/Statistics.html> (accessed October 1, 2006)

²⁶⁹ Druckman, Daniel, 2005, **Doing Research, Methods of Inquiry for Conflict Analysis**, Sage Publications

The research in this chapter demonstrates that ombudsman statistical or financial reporting is not consistent. Some ombudsmen report on staffing complements or budgets, and others do not. The classifications for closing files may vary. Case management recording varies among the types of ombudsmen: organisational ombudsmen do not investigate, while classical and executive ombudsmen do investigate and may make recommendations.

This chapter compares the Office of the Ombudsman for the Internet Corporation for Assigned Names and Numbers (ICANN) and three other ombudsman offices: the Ombudsman for the Province of Saskatchewan, the Ombudsman for Banking Services and Investments (Canada) (OBSI), and the United Nations Staff Ombudsman. The purpose of this review is to benchmark some comparators between similar agencies to see whether it is possible to determine if the ICANN Office of the Ombudsman operates effectively, and to provide guidance to ombudsman practitioners who may wish to demonstrate value by comparing outputs with similar operations.

Twain's words above provide strong guidance for this exercise. The ICANN Ombudsman is unique. It is an executive ombudsman's office, and these are few in number. Also, it is unique in its operational environment as it is also an online ombudsman that serves a wide and varied population. The two comparables are neither executive nor online ombudsman entities, but in balance still provide relative and relevant opportunities to look at activities.

The Saskatchewan Ombudsman is a classical or governmental ombudsman, while the United Nations Ombudsman is an organisational one. The former is independent from government and receives complaints from persons affected

by government administration. The latter is independent within the United Nations structure, and receives complaints from aggrieved staff.

The United Nations Ombudsman is a relevant comparator as it, like the ICANN Ombudsman, represents ombudsman work in an international context. An environmental scan shows that the United Nations and ICANN Ombudsman operations are the only two global ombudsman programmes, albeit their complaint focus (United Nations is internal, ICANN is external) is different.

The Saskatchewan Ombudsman was chosen as a comparator as it has a similar number of complaint intakes. Its annual report also offered one of the most comprehensive set of statistics concerning ombudsman operations.

The ICANN Ombudsman is most similar to the OBSI, which is an agency funded by banks, investment houses, and mutual funds dealers, and which has characteristics most close to the ICANN Ombudsman in that it is an inside organisation taking complaints from outside.

This comparison represents a momentary view of all three ombudsman offices in early 2006 and is based on: the 2004 annual report to the Legislature of the Saskatchewan Ombudsman,²⁷⁰ the 2005 OBSI annual report,²⁷¹ the United Nations Ombudsman's Report to the General Assembly,²⁷² the and ICANN Ombudsman statistics current to early 2006. The comparisons with the Saskatchewan and UN Ombudsman offices were

²⁷⁰ Saskatchewan Ombudsman, **2004 Annual Report**, Regina, April 2005

http://www.legassembly.sk.ca/officers/omb/ProvOmbud_Ann_2004.pdf (accessed January 27, 2007)

²⁷¹ Ombudsman for Banking Services and Investments, **Annual Report 2005**

http://www.obsi.ca/obsi/pages_english/includes/xcontent/annrep_archive/05.pdf (accessed October 15, 2006)

²⁷² United Nations Ombudsman, **Report to the General Assembly, August 31, 2005**

<http://daccessdds.un.org/doc/UNDOC/GEN/N05/522/04/PDF/N0552204.pdf?OpenElement> (accessed January 27, 2007)

originally communicated to the ICANN Board of Directors in the January and February 2006 monthly reports from the Ombudsman. The comparisons are based on information found in public reports of the comparables at that time.

A third-party review of the results of literature-based review was conducted by Mr. John Zinsser, who did third-party analysis of the literature-based review in Chapter Six and the system user survey in Chapter Eight.²⁷³ In this case, the results were prepared on behalf of the Board of Directors Audit Committee. They validated the results and methodologies for the Board. Practitioners may validate results by having a third party or a peer ombudsman conduct an analysis of the results. The third-party review is attached as Appendix 7.

7.2. Saskatchewan Ombudsman

According to its 2004 annual report, the Saskatchewan Ombudsman has a staff compliment of 19. The ICANN Ombudsman is a sole practitioner office, with an adjunct ombuds, for a compliment of 1.08 full time equivalent (FTEs).

During the relevant period, the Saskatchewan Ombudsman had a budget of \$1.255 million for salary and \$326,000 for operating expenses, for a total of \$1,581,000. During the same relevant period the ICANN Ombudsman budgeted \$183,000 for salary and \$140,000 for operating expenses, totaling \$325,000 (all Canadian dollars). The ICANN Ombudsman under-spent during this fiscal year by \$40,000, and the total expended budget was \$285,000.

The Saskatchewan Ombudsman reported jurisdictional 2913 intakes, with assistance rendered or the matter investigated in 639 cases (22%).

²⁷³ See Appendix 11, Introduction; and Appendix 10. Introduction and Executive Summary for further information on the use of third-party reviewers

The ICANN Ombudsman handled 1692 intakes, with assistance given or the matter investigated in 348 matters (20.5%). Thirty-six cases were found to be jurisdictional (i.e., to be within the review powers established by Bylaw V) (2.1%).

As a crude average, this would mean that the Saskatchewan Ombuds staff each completed 7.95 investigations at a cost of \$10,470.95 per file, while ICANN office completed 33.33 investigations per staff (at 1.08 FTEs) at a cost of \$7947.36.

7.3 United Nations Staff Ombudsman

The UN Staff Ombudsman programme was instituted in July 2002, and the Ombudsman first reported to the General Assembly in 31 August 2005;²⁷⁴ thus, her first report covers three years. The Ombudsman has a staff of six FTEs. The Ombudsman is paid at level of an assistant secretary general, consistent with the principle that the American Bar Association recommends “that the Ombuds be of sufficient stature in the organisation to be taken seriously by senior officials.”²⁷⁵

The United Nations Ombudsman does not comment on her budget in the report to the General Assembly.

In roughly three years of operation, with six staff, the Ombudsman reported that she has handled 1386 complaints and contacts. The ICANN

Ombudsman’s Office handled 1850 intakes and complaints over a period of

²⁷⁴ United Nations Ombudsman, **Report to the General Assembly, August 31, 2005** <http://daccessdds.un.org/doc/UNDOC/GEN/N05/522/04/PDF/N0552204.pdf?OpenElement> (accessed January 27, 2007)

²⁷⁵ American Bar Association, 2004, **Standards for the Establishment and Operation of Ombuds Offices**, <http://www.abanet.org/adminlaw/ombuds/115.pdf> (accessed October 30, 2006)
Footnote 11, p13

16 months during that same time. This provides a crude average of 6.4 contacts per staff member per month at the UN Office, and 107 contacts per month per staff member at the ICANN Office.

7.4 Ombudsman for Banking Services and Investments

The Ombudsman for Banking Services and Investments (OBSI) is an agency which is formed across the major chartered banks, investment houses, and mutual funds dealers,²⁷⁶ in response to federal legislation which requires that federally regulated financial institutions belong to a third-party dispute resolution system.²⁷⁷ Some OBSI members are institutions which are not required by law to belong, but do so voluntarily, such as credit unions, which fall under provincial and not federal jurisdiction. The OSBI assumes jurisdiction when issues have not been resolved to the satisfaction of consumers using in-house dispute resolution procedures.²⁷⁸

The OBSI reports 308 intakes in 2005, with 164 cases being jurisdictional. The OBSI has a staff of 17, and therefore averages fewer than 10 files per staff member on an annualized basis. The OBSI does not report on its budget. It should be noted that the OBSI handles complaints which will have normally have passed through three or four levels of review before it can assume jurisdiction, and that some investigations may involve complex financial and market data. Unlike other ombudsman operations, the OBSI may make recommendations with respect to financial compensation after it has conducted an investigation, and made nonbinding determinations.²⁷⁹

²⁷⁶ See <http://www.obsi.ca/UI/FAQs/FAQs.aspx?csid1=2>

²⁷⁷ Bank Act (RSC 2000) S.455.1(1)

²⁷⁸ Bank Act (RSC 2000) S.455.1(1)

²⁷⁹ Ombudsman for Banking Services and Investments, How we Work, <http://www.obsi.ca/UI/FAQs/FAQs.aspx?csid1=4> (accessed October 16, 2007)

7.5 Summary – What Does it Mean?

This chapter demonstrates that it is possible to develop a segment of the evaluation blueprint, and therefore, gain meaningful information by comparing ombudsman operations. The ICANN Office of the Ombudsman was used as a test case against three other ombudsman operations. While there may be parameters which establish uniqueness with each ombudsman operation, there are similarities which can be compared. The annual reports of ombudsman operations may provide information about budgets, numbers of staff members, cases opened and closed, and the resolution of these cases. All of these contribute to the ability of evaluators to gain information which adds to an overall view of the ombudsman operation.

Bearing in mind that these are not direct comparisons (i.e., executive online ombudsman to executive online ombudsman), and that the basis of comparison is limited to the extent of the information provided in the public reports of the comparables, the analysis still has value. It shows that the ICANN Ombudsman, in relative terms, assists or investigates and has jurisdiction over issues complained about in stride with a classical ombudsman's office. In other words, the volume of non-jurisdictional enquiries made to the ICANN Ombudsman is seemingly normal with that volume received by other ombuds which do intakes from the general public.

Second, the averaged volume of contacts and complaints handled by the ICANN Ombudsman is well above those of executive, classical, and organisational ombudsman.

7.5.1 Considerations for Ombudsman Practitioners

The evaluation blueprint is augmented by longitudinal surveys. The considerations below help to establish a blueprint for analysis by comparison. An ombudsman may be able to benchmark activity and develop an evaluation of productivity based on a statistical comparison of activities, budgets, and resources. Due to the diversity of the comparators in this particular evaluation, it may be considered that although some inferences may be made, the comparison is not robust enough to provide a high degree of utility. However, if similar comparison were made with similar institutions, for example, across the sub-field of university ombudsman operations in California, the results would have greater validity.

It is important to bear in mind that these comparisons are based on a snapshot of activity. It is neither a predictor of future comparisons nor of intake volumes. These will, of course, be dictated by issues handled by the agency, and by community response.

In conducting a statistical comparison, ombudsmen should keep some general guidelines in mind:

- No two ombudsman operations are exactly the same. Qualifiers such as the method of gathering and maintaining statistics, historic age of the operation, reputation of the incumbent, outreach activities, legal frameworks, and frequency of reporting all impact on the veracity of the comparisons.
- No two ombudsman complaints are exactly the same. A review and report on an unfair governmental system may take years of

investigation and reporting as well as the attention of multiple staff members. A referral to an outside source may be repeated often, and at the front line of the organisation. Both of these file activities would have a similar statistical weighting—a file closed by the ombudsman. A cautionary note is for the ombudsman to attempt to have the most rational comparisons possible.

- Ombudsmen should compare their operations with similar operations. These would include operations of similar classification (classical to classical, organisational to organisational), size (of the client audience and resources), and mandate (university to university, bank to bank).
- Complaint volumes may be tied to outreach activities and topical events. The presence or absence of which may increase or reduce activity.
- It is also important to consider the complexity of the investigation activity or the subject matter of the complaints being used in the statistical comparison.
- Comparisons can be made on a number of lines:
 - Raw numbers of staff, complaints, and resources
 - Files per staff member
 - Cost per file
 - Cost per file per staff member
 - Activities in respect of each file or file type

- Processes used
- Demographic profiles
- Compliance with recommendations

Chapter Eight

System User Survey

8.1 Introduction

This Chapter further strengthens the evaluation blueprint by considering the use of feedback from system users or stakeholders as a tool for evaluation. The Chapter considers the feedback and analysis with respect to the test case, the ICANN Office of the Ombudsman, and makes recommendations for the use of surveys in the overall ombudsman evaluation blueprint. A number of different individuals or groups may be considered to be ombudsman system users or stakeholders. Stakeholders may be:

- Internal or external complainants, who contact the ombudsman for redress of an issue;
- Administrative work units whose work is the subject of an ombudsman review;
- Senior administration or directors or governors of an agency, or elected officials who wish to be assured that their organisations attain a reputational value or legal status through the good offices of the ombudsman; or
- The community (however that is defined) as a whole, which latently benefits from individual or systemic reviews.

One source of evaluation information is the perception held of the office of the ombudsman by its users. This proposition is a two-edged sword. On the one hand, the ombudsman will want to be able to demonstrate that there is meaning in the work conducted, that reports are reasonable and understandable, and that the work is conducted with dignity and respect. On

the other hand, the ombudsman is an independent officer of a state or organisation, and it may be that his independence may be seen to be fettered if too much attention is paid to client opinion surveys rather than to neutral, fair, and independent reviews. It is critical for an ombudsman who seeks information about user satisfaction to direct his or her enquiries with respect to process satisfaction as opposed to outcome satisfaction. There are many occasions where the ombudsman may provide users a satisfactory process but not a satisfactory outcome.

Paradoxically, there are times when ombudsman reviews may create polarity across client groups. The ombudsman uses a number of dispute resolution tools: mediation, negotiation, fact finding, or report writing and recommendations. These correspond to facilitative, advisory, or determinative processes. At the end of a review, the ombudsman may generate high satisfaction from complainants for having made recommendations to resolve an issue. On the other hand, the bureaucracy may be (silently or vocally) dissatisfied at having its administrative processes criticized, especially if that criticism is public.

Information about the perceptions of system users may come in many forms. Ombudsmen may develop an understanding of client satisfaction by monitoring media, blogs, or other public comment mechanisms.

This chapter is concerned with developing a survey tool that assists ombudsmen in understanding complainants' experience in the ombudsman process. The questions that may be asked in a survey, and the underlying factors they measure,²⁸⁰ will vary depending on the type of ombudsman

²⁸⁰ These include variables including languages used, responsiveness, accuracy of information provided, and evaluation of communication tools, website, and correspondence.

(classical, executive, or organisational), the age or maturity of the operation, and the purpose of the evaluation where the survey is the tool used.

This chapter explores and comments on the client survey tool developed by ICANN. The chapter is supported by Appendix 8, Client Survey Questions, Appendix 9, Client Survey Results, and Appendix 10, Third-party Comment on the Client Survey. As with other evaluation tools developed in this dissertation, there is a recommendation that the results be verified or reviewed by a third party. This additional process adds credibility, veracity, and independence to the results.

The ICANN Office of Ombudsman came into existence on November 1, 2004, when the incumbent was appointed. The first complaint from the community was received on December 9, 2004. From that date to October 2006, over 2100 complaints were raised to the Ombudsman.²⁸¹

The purpose of this chapter is to provide analytical context and evaluation of the results, and to make recommendations for future improvements of the operations of the Office and the survey tool. For the purposes of this dissertation, complainants are defined as members of the ICANN community who have either initiated correspondence with the Ombudsman with either a contact (general enquiry or non-jurisdictional issue) or a complaint (a grievance concerning an act, decision or inaction by ICANN). Complainants initiate correspondence with the Ombudsman using either a complaint or contact form.²⁸² As the ICANN Ombudsman serves a global community involved with the Internet, the Ombudsman does not accept complaints made

²⁸¹ See Table at 6.5.9

²⁸² <http://www.icann.org/ombudsman/contact2.htm>

by telephone. This has not limited access to the Ombudsman due to the system users' specific involvement in the Internet.

As part of the continuing evaluation of the operations of the Office of the Ombudsman, an online client survey was conducted in July and August 2006, with 387 invitations to participate sent to individuals who had either made contact with the Office or who had completed a complaint or contact form. Some 1500 correspondents were excluded from the survey as they had contacted the Office as part of orchestrated letter writing campaigns on two issues which had been before the ICANN Board of Directors (one dealing with the existence of pornography on the Internet by a conservative Christian group in the Western United States, and the other concerning the renewal of the .com license agreement). These cases had little value as potential survey responses as the correspondents had contacted the Office with a genuine personal concern related to ICANN's mandate. The likely responses would be predictably negative and therefore unhelpful in determining the actual effectiveness of the Office. It was considered that survey responses from this group would lead to overwhelming number of skewed responses and would denigrate the quality of the survey.

Each survey invitation was sent to the originating correspondents as a reply to the complaint or contact form, or to the originating email. This provided context to the correspondent for the survey, and as an aide-memoire of the issue.²⁸³ The survey was hosted on a commercial survey website,

www.surveymonkey.com.²⁸⁴ The use of a commercial survey site ensured

²⁸³ See Appendix 8

²⁸⁴ The survey results can be found online at:
<http://www.surveymonkey.com/Report.asp?U=240569297233>

that the collection of the responses was in no way manipulated by the Ombudsman or ICANN.

The survey was designed to gauge a number of factors, including understanding of the Ombudsman mandate, contemplated reasons for contact, and process outcome satisfaction levels. The survey methodology combined multiple choice answers, scalable answers, and open question text responses in 17 questions.²⁸⁵

The response level was high, especially given that the age of the complaints spanned up to 20 months. There were 85 responses to 387 invitations, or a response rate of 22%. The survey was open for response from July 26, 2006, to August 16, 2006, with the last submission received on August 7th.

While the number of responses is not large, the ICANN Ombudsman will repeat the survey on an ongoing basis. Doing so will increase the validity of the results. In the interim, the survey provides some ability to analyze and comment on its results. It can be postulated that some did not respond to the survey because they no longer felt attached to the issue, they benefited from a positive outcome and felt no reason to reply, or they were disappointed by the process or the outcome and felt no reason to reply.

8.2 Survey Questions

The 17 questions are addressed in order below. The survey, as it appears on the website, is attached as Appendix 8. The results of the survey appear in Appendix 9.

²⁸⁵ See Appendix 8 for the list of survey questions, and Appendix 9 for the responses.

8.2.1 How did you hear about the Office of the Ombudsman?

The purpose of this question was to determine the manner in which complainants find information about the Office of the Ombudsman in order to be able to lodge a complaint or make contact with the Ombudsman. It is not surprising that the method of first hearing about the Ombudsman is aligned with the operations of the agency, through the Internet. The survey indicates that almost half (49.4%) of the respondents found information about the Ombudsman through the ICANN website, and another 21.2% through Internet searches. Over seven out of 10 contacts emanated from the Internet. The remainder was generated by ICANN publications, word of mouth, referrals, or existing personal knowledge.

This would indicate that the presentation and content of the Ombudsman website are vital to the process.

8.2.2 Can you tell us about your understanding of the Office of the Ombudsman?

The purpose of this question was to attempt to understand expectations complainants might have in contacting the Ombudsman. The results indicate that many who contacted the Ombudsman had limited understanding of the Office of the Ombudsman. While a majority of the respondents indicated that they understood that the Ombudsman investigated complaints about ICANN, 22% of respondents did not. Similarly, 64% of respondents understood that the Office's mandate dealt with fairness and 36% did not. Only 24% understood that the Ombudsman practiced alternative dispute resolution to resolve complaints.

8.2.3 How long ago did you access the Ombudsman's services?

The purpose of this question was to evaluate the currency of correspondents' involvement with the Office of the Ombudsman. Intakes in the Office have been relatively constant on a month-to-month basis, excluding email campaigns relating to .com and .xxx. The survey indicates that the majority of survey respondents (61%) reach back past six months to the inception of the Office in November 2004. This indicates that there are a number of respondents who have a desire to discuss their complaint, process, or outcome dissatisfaction with the Ombudsman, even if the issue they raised was at some point in the past.

8.2.4 What did you contact the Ombudsman about?

This question considers whether the issue relating to the correspondence also relates to the Ombudsman's mandate (an ICANN staff, Board, or supporting organisation act, decision, or inaction). Less than 30% of correspondents contacted the Office about a jurisdictional issue, and 42% contacted the Office about a domain name or registrar issue. This indicates, and is further evaluated in Question Six (see 8.2.6), that consumers contact the Office of the Ombudsman in the hope of finding assistance about general service issues that may not be related to ICANN administration.²⁸⁶

The survey allowed for an open response to the question "What did you contact the Ombudsman about?" The 24 narrative responses show a wide range of issues, the majority of which deal with domain name or other non-jurisdictional issues.

²⁸⁶ See Appendix 8

8.2.5 If you used the Office’s services, how well did the Ombudsman meet your expectations with regard to the following?

This is one of the key questions in the survey, as it assesses whether expectations were met. The question measured eight elements: confidentiality, timeliness, professional manner, respect, explaining the Ombudsman’s jurisdiction, providing an appropriate referral, updating or corresponding with you, and overall. The baseline was established using the correspondents’ expectations of service (the scale ranged from not at all to expectations met to better than I expected). Correspondents were also permitted to reply “N/A” or not applicable.

This question was analyzed as an overall response, and then with four different sets of filters applied to gauge satisfaction-based on the high and low jurisdictional relevance.

With the overall response, in general the community expectations were met or exceeded. The scale of response was based on a high score of 10 being “better than I expected”, and a low score of “not at all” being 1. A mean score of 5 corresponded with “expectations met.” In seven out of eight categories the average response was five and above, indicating that in an overall sense the survey respondents’ service expectations were met. The “in providing an appropriate referral” rated below this, and had a response average of 4.13.

The results of some questions appear to be consistent; with the questions relating to confidentiality, timeliness, professional manner, and respect, the majority of the responses clearly fall between expectations met or expectations exceeded. However, other responses show some polarization or dichotomies in the results. For example, the “overall” satisfaction was equally

balanced with 23% not having their expectations met at all, and 23% have their expectations exceeded, with a 5.34 out of 10 overall response average. There is an explanation for these variances. Using four sets of filters, the research demonstrates (which will be borne out with supporting data from other questions) that expectations are met when related to the Ombudsman’s ability to claim jurisdiction over an issue and provides an outcome desired by the complainant.

Table 8.1 – Characteristics of Jurisdiction and Outcome

Jurisdiction	Characterized by	Outcome	Characterized by
High ↓	ICANN Staff, Board or Supporting Organisation – Act, Decision or In action	High ↓	Matter Resolved by the Ombudsman following investigation
Low	Domain name – registrar issue	Low	Referral to some other body

For example, using filters to analyze the meeting of expectations of those who contacted the Ombudsman about a matter they knew related to an ICANN act, decision, or inaction (Question Two – highest jurisdiction) and where the Ombudsman took action and the matter was resolved (Question Seven – highest outcome), the responses were considerably higher than the omnibus results. These scores range from 6.33 for “timeliness” to 8.33 for “updating or corresponding with you.”

Using a second set of filters to look at high jurisdiction (ICANN act, decision, or inaction) and moderate outcome (the complaint was investigated), the scores are still generally higher than the overall. The scores range from 4.75 (in providing an appropriate referral) to 7.50 (confidentiality).

A third set of filters analyzes low jurisdiction (my registrar or domain name) and moderately low out come (referred to someone else). At this point the

satisfaction scores fall to a range of 2.75 (updating or corresponding with you) to 5.20 (professional manner).

Finally, when the last set of filters is applied with low jurisdiction (my registrar or domain name) with low outcome (the Ombudsman declined to investigate) the satisfaction scores tumble into a range of 1.50 (in providing an appropriate referral) to 4.50 (timeliness). These are the lowest scores in relation to meeting expectations.

Thus, there is a strong relationship between expectations being met at the end of the process and a combination of the Ombudsman's ability to act (jurisdiction) and the results of the actions taken (outcome). The results show that the more the complaint is within jurisdiction (and whether it is resolved), the greater likelihood that expectations will be met or exceeded.

This notion of expectations being met, or satisfaction, being related to outcome was described by Kushner in a paper he delivered to the 8th International Ombudsman Institute Conference in 2004:

But on the question of whether the complainant was satisfied with the process, we scored lower than I expected. Only forty-eight percent of the complainants surveyed were satisfied with the process of the investigation. We also discovered that there was a high correlation between the outcome of the investigation and satisfaction with the process. Ninety-one percent of those who agreed with the outcome of the investigation were satisfied with the process whereas only twenty-six percent of those who disagreed with the outcome were satisfied with the process.²⁸⁷

²⁸⁷ Kushner, Howard, **How do you know you are doing a good job? Strategic Plans, Performance Measures, and Surveys**, in Reif, Linda, Editor, **The International Ombudsman Yearbook, Volume 7, 2003**, pp53-63, Martinus Nijhoff Publishers, Boston 2005, p59

Figure 8.1 illustrates client satisfaction based on meeting expectations as per survey Question Five. The High Jurisdiction – High Outcome (ICANN act, decision, in action which was resolved) satisfaction range is higher and tighter than the Low Jurisdiction – Low Outcome (registrar or domain name – complaint declined).

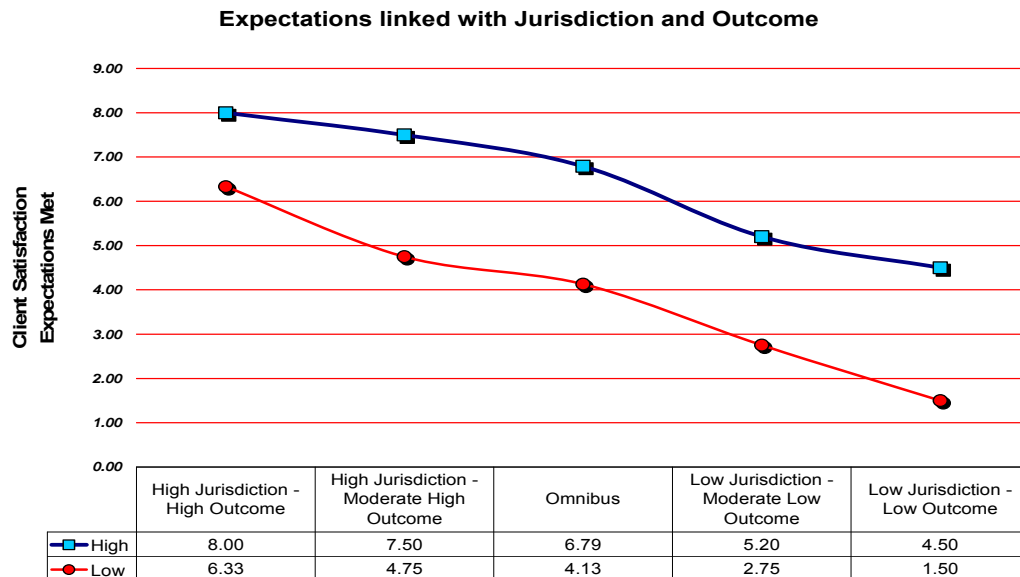


Figure 8.1 – Expectations Links to Jurisdiction and Outcome

8.2.6 If you did not have the option to correspond with the Ombudsman about your issue, where would you have gone to get help?

The purpose of this question was to gauge the options available to a system user if the Ombudsman is not used. Often survey respondents indicated that they contacted the Ombudsman because they had no idea who else to contact. The response “Don’t know, that’s why I contacted the Ombudsman” accounted for 50% of the overall responses. This lack of an outside agent was also noted in 57% of the low jurisdiction responses, and in 37.5 % of high jurisdiction responses.

High jurisdiction respondents were most likely to have turned to consumer protection organisations, governments, or ICANN Board members. Low jurisdiction correspondents indicated they would have approached consumer protection services, contacted a lawyer, or initiated legal action. The Ombudsman may have been contacted because users could not find a place to appropriately raise their issues.

Overall, survey respondents indicated use of the following services in this order: consumer protection agency, consulting a lawyer, initiating legal action, ICANN staff, government official, registrar, Board member, registry, and other. This list of options demonstrates that many of the issues brought forward belong to other jurisdictions or regulatory schemes, and that the Office of the Ombudsman is frequently contacted about low jurisdictional issues. The ICANN staff and Board members are relatively low on the list of identified options, while consumer and legal services are more likely to be used by those who have an option aside from the Ombudsman.

8.2.7 What was the result of your communication with the Ombudsman?

This question measured how the correspondents considered their complaints to have been closed, and the following questions (Eight and Nine) look at the steps the complainants took after the Ombudsman closed the file. The responses indicated the following order of dominance: other (narrative open responses) 39.3%; Ombudsman took action and the issue was resolved 20.2%; the Ombudsman declined to investigate 20.2%; referred to someone else 15.5%; the complaint was investigated 13.1%; I received self-help information 11.9%; and I withdrew my complaint 4.8%.

The volume of narrative responses to this question was surprising. However, there is not necessarily a trend to be found in either the multiple choice or narrative responses.

Statistics from the Office of the Ombudsman since start-up show the following as the overall closings since inception:²⁸⁸ resolved 5%; referral 45%; self-help 23%; declined – no further action – unfounded – 23%; abandoned – withdrawn 4%. Comparing these actual closing figures against those self identified in the survey shows that large numbers of system users who received either self-help information or referrals did not participate in the survey.

An unanswerable question then becomes, Was this lack of participation due to the likelihood that their issues were low jurisdiction–low outcome matters? If the bulk of those who had contacted the Ombudsman with low jurisdiction–low outcome matters did not take part in the survey, what is driving the

²⁸⁸ The Ombudsman Framework defines the closing categories as:

- **Resolved:** When the matter that the complainant has brought to the attention of the Ombudsman has been resolved between the parties to the satisfaction of the Ombudsman.
- **System Improvement:** When during the course of conducting an investigation the Ombudsman makes a recommendation to ICANN which leads to the improvement of operational system.
- **Referral:** When a complaint does not lie within the jurisdiction of the Ombudsman, and the complainant is either a) passed directly to the responsible staff person within ICANN, or b) given a point of reference outside of ICANN such as the Office of Fair Trading.
- **Self-help:** When the contact requires only the transmittal of information enabling the client to then be self empowered to deal with the matter of the contact on their own. (i.e. information found on various ICANN web pages)
- **No further Action Required:** The Ombudsman may begin initial steps in dealing a matter and then find that there is no further action required due to the circumstances, (i.e. the complaint may be related to a time sensitive issue, or on evaluation the complaint may not warrant investigation (trivial))
- **Decline Jurisdiction:** The Ombudsman may decline jurisdiction, as described in the Ombudsman Framework, for matters such as the timeliness of a complaint, lack of personal interest, trivial, vexatious, etc, or in a circumstance where the complainant escalates the complaint to a formal process under Bylaw III.
- **Unfounded:** When the Ombudsman investigates a complaint and determines that the matter that the complainant was in contact with Ombudsman about was unfounded.
- **Withdrawn:** When a complainant notifies the Ombudsman that they no longer wish to pursue their complaint.
- **Abandoned:** When a complainant ceases to be involved in the Ombudsman process without notice to the Ombudsman.
- **Unresolved and escalated under Bylaw IV;**
- **Resolved with a Notification to the Board;**
- **Resolved with a Recommendation to the Board.**

participation of those who did? It is possible to assume that these represent issues that are simply not resolvable, such as a trademark holder who cannot afford to pay the fees associated with the ICANN Uniform Domain Name Dispute Resolution Policy (UDRP), or the past holders of expired domain names that have been re-registered. The narrative open responses indicate a general theme of displeasure with registrar business practices.²⁸⁹

On the other hand, the narratives also portray a dichotomous level of appreciation of registrar issues which were resolved. “I was surprised. The matter WAS investigated, I was contacted by the registrar who had wronged me, and the issue was promptly corrected. I have no complaints about how the Ombudsman handled the matter, and compliment ICANN on how this was handled.”²⁹⁰

8.2.8 If you received a referral or self-help information from the Ombudsman, did it assist you in resolving the matter?

The responses to this question point out an anomaly in the information received. For Question Seven, “What was the result of your communication with the Ombudsman?”, 13 respondents indicated that they were referred to someone else and 10 received self-help information. However, 57 respondents responded to Question Eight, “If you received a referral or self-help information from the Ombudsman, did it assist you in resolving the matter?” In other words, almost two and a half times as many people replied to the qualitative question as they did to the quantitative question on the same subject matter.

²⁸⁹ See Appendix 8 Responses to Question 17

²⁹⁰ Appendix 2, Question 17, response 31

Generally a majority of the respondents (63%) indicated that the self-help information or referral did not assist them in resolving the matter. However, after applying filters it can be seen that certain issues were more likely to be assisted by a referral or self-help information. Complaints relating to UDRP issues were balanced in the survey, with 40% indicating the referrals were helpful, 40% indicating that they were not, and 20% finding the information somewhat helpful. However, 67% of those who complained about their registrar or domain name did not find the information helpful.

Future surveys should include an open question narrative response that enables correspondents to explain why they are dissatisfied with the referral or self-help information. It would be relevant in future surveys to try to determine whether the dissatisfaction is due to inappropriate information being provided, or whether appropriate information was provided with a resulting communication that did not solve the issue in the eyes of the correspondent.

8.2.9 After the Ombudsman corresponded with you at the end of his work, what did you do?

This question measured the steps taken by the correspondents once the Office of the Ombudsman closed the file. The survey indicates that 39% of the respondents took no further action after the Ombudsman had reviewed the matter. There may be a number of reasons for this. First, they were satisfied with the explanations provided or steps taken. Second, the matter was handled through correspondence referred to the chief registrar liaison. Finally, the correspondents simply let the matter drop.

As with the previous question, an anomaly in the responses was noted. For Question Seven, 23 respondents indicated that they had received self-help information or a referral. However, for Question Eight, 57 people gave qualitative responses concerning referrals or self-help information. For Question Nine, 18 complainants indicated that they “corresponded with the person or agency the Ombudsman referred me to,” but only 13 correspondents for Question Seven indicated that they had been referred to someone else. For Question Nine, seven indicated that they “used the self-help information,” and for Question Seven, 10 had received self-help information.

On a more definitive and helpful note, for Question Six, 12 complainants noted that they would have contacted a lawyer if no Ombudsman was available, and a further 10 indicated that they would have initiated legal action. However, at the end of the Ombudsman process, only four contacted a lawyer and only three commenced legal actions. By coming to the Office of the Ombudsman first, over two-thirds of respondents found a capacity to avoid the legal system. This, of course, has a direct savings impact on ICANN operations and resources, and on members of the ICANN community, especially registrars. It also likely means a cost saving to the system user who accessed a no-fee Ombudsman service as opposed to a lawyer.

8.2.10 If you contacted the Ombudsman in a language other than English, were you satisfied with the translation service?

There is insignificant data from the responses to be able to infer any relevant information. The sole helpful piece of information is that six persons

responded to the question, indicating that other than English first language speakers have made use of the system.

As with Question Eight, it will be important in future surveys to provide for a narrative response to understand any dissatisfaction. It is possible that a reason for dissatisfaction may be delays caused by the time lag created by the translation process. While most complaints are addressed by the Ombudsman in the first 24 hours, complaints in a language other than English or French are translated, and there can often be a delay of several days before a reply can be sent in the native language.

8.2.11 Can you tell us about your experience with the Ombudsman web page?

The purpose of this question was to evaluate the ICANN Ombudsman web page. Generally, the responses indicated that the webpage had a positive response. The scale of satisfaction ranged from 1 to 5 (no – somewhat – yes). The response averages ranged from 3.19 to 3.4, which indicates a positive experience with the web page.

8.2.12 What part of the web page did you visit?

Questions Twelve and Thirteen investigated which part of the website was visited by correspondents, and therefore which portions of the site the Ombudsman needs to be most attentive to. The predominant page was the complaint-contact form, used by 77%. A number of emails were received directly from correspondents in the first year of operation. In December 2005, there was a significant redesign of the complaint-contact submission page, and direct email contact has effectively been eliminated. Information is now received on a fillable complaint or contact form.

The “About the Ombudsman” portion of the web page was visited by 70% of the correspondents. Question Thirteen demonstrates that 54% visited the Annual Report. These results would indicate that visitors are primarily interested in making complaints and gaining information about the Ombudsman.

8.2.13 If you have read the Ombudsman’s Annual Report, what language did you read it in?

The purpose of this question was to determine if the Annual Report was read by visitors to the web page. The survey indicates that 39 of 85 correspondents read the Annual Report, and that the German and Spanish translations were each read by a single reader.

8.2.14 If you read the Annual Report, did you about learn the role of the Ombudsman?

The purpose of this question was to evaluate whether Annual Report readers gained knowledge about the role of the Ombudsman. There was a low response rate of 40% to this question. However, the response average was 2.58 on a scale of 5, which indicates that the Annual Report is helpful in providing information about the role of the Ombudsman.

8.2.15 Would you recommend the Office of the Ombudsman to someone else who had an ICANN related issue to resolve?

This overall satisfaction question helps to evaluate whether the client group found the experience of communicating with the ICANN Ombudsman something they would recommend to another party. Approximately 59% of correspondents (49 responses) would make that recommendation. The interesting incongruity is that in Question Four, only 29.4% (25 responses) of

correspondents had contacted the Office of the Ombudsman about an ICANN act, decision, or indecision, yet double that number would recommend that another person contact the Ombudsman about an ICANN issue. This may indicate that there was a higher degree of satisfaction with the results of an Ombudsman intervention than was postulated in Question Five.

8.2.16 Where do you live?

Based on the statistics kept by the Office of the Ombudsman, it is not surprising that 63.1% (n = 53 of 84) of survey respondents came from North America. The distribution of survey responses is in line with the Ombudsman intake statistical distribution. On a humorous note, two correspondents from the United States wrote in “USA” as a response to “Other (please specify)” instead of being part of North America. This same response method was noted for two correspondents from the UK, which was apparently not part of the Europe response.

8.2.17 Is there anything else you would like to add to assist our evaluation of the Office of the Ombudsman?

This open ended question allowed correspondents to provide a narrative of their opinions. As with much of the survey, there was a dichotomy in responses, from the very positive to the very negative, and from the very brief to the very lengthy. The responses make it evident that the High–Low Jurisdiction and High–Low Outcome factors continue to drive the meeting of expectations. It is evident from reading the narratives that express the greatest dissatisfaction that the issues they brought to the Office of the Ombudsman related to commercial relationships with registrars.²⁹¹

²⁹¹ See Appendix 8, Responses to Question 17

8.3 Peer or Third-party Review

A third-party review of the survey results was also conducted by Mr. John Zinsser, who did third-party analysis of the literature-based review in Chapter Six and the statistical comparison in Chapter Seven.²⁹² In this case, the results were prepared on behalf of the Board of Directors Audit Committee. They validated the results and methodologies for the Board. Practitioners can validate results by having a third party or a peer ombudsman conduct an analysis of the results. The third-party review is attached as Appendix 10.

8.4 Analysis and Discussion

The indicators suggest that, with the relative exception of a certain scope of complaints that are not resolved as a result of a referral or self-help information, survey respondents are generally satisfied with the services provided. This is especially reflected in the responses to Questions Five (satisfaction matrix) and Fifteen (refer someone else to the Ombudsman). There was a redesign of the Ombudsman contact complaint web page in December 2005, with a goal of providing jurisdictional and self-help information to correspondents before they completed one of the contact forms. This also assists in creating a reasonable expectation of actions undertaken by the Ombudsman. This management of expectations is especially important in the low jurisdiction–low outcome issues as system users search out some assistance they cannot find elsewhere. Future surveys of a population who have used the complaints contact forms after December 2005 will be able to compare whether these steps are helpful in ensuring that expectations are met.

²⁹² See Appendix 11, Introduction; and Appendix 10. Introduction and Executive Summary for further information on the use of third-party reviewers

The survey respondents make it clear that the ICANN Office of the Ombudsman web page and the ICANN page are important in drawing clients to the Ombudsman and in providing them information. A web presence is the chief method of contact and education. It is important then that there should be continual monitoring of the web page material to ensure that it is current (i.e., links are up to date) and that it is easy to navigate and read. The survey indicates that material in languages other than English, as well as translation services, are desirable.

The survey indicates that website visitors frequently access three areas: information about who the Ombudsman is (About the Ombudsman); what the Ombudsman has done (Annual Report); and making contact to bring an issue to the Ombudsman's attention (complaint-contact forms). Any revision to the web page should pay particular attention to these three areas.

Attention should be paid to finding methods of monitoring and reviewing both self-help and referral file closings. Steps to be taken may include a review of the self-help information to ensure currency, appropriateness, and the like; using open-ended questions in future surveys to better analyze problems in this area; creating a monitoring function in the Seemore database²⁹³ for in-house referrals to be able to capture data on closings or referrals in other work areas.

Despite the low response rate, the survey provides some indications that the Ombudsman appears to be successful in completing the mandate established under the ICANN Bylaws, and that issues in the Ombudsman's jurisdiction are well dealt with. This success is noted with the analysis of Questions Five and

²⁹³ ICANN Office of the Ombudsman case management system, scheduled for start up in late 2007

Fifteen; and critically in the statistic that the Ombudsman is able to use ADR techniques to reduce a correspondent's potential need to seek legal advice or initiate legal action by 66%. Over the volume of contacts in a given year, and over time, it is only reasonable to believe that this represents a cost saving to the organisation both in terms of money and Board and staff time, and to users bringing forward complaints.

8.5 Summary

This analysis, which used the ICANN Office of the Ombudsman as the test case, demonstrates that it is possible to survey clients and to maintain confidentiality.²⁹⁴ ²⁹⁵ The dissertation further demonstrates that surveys can be implemented with questions developed for the specific Ombudsman operations. The Internet provides a number of survey hosting tools (if that is the appropriate manner of collecting information from the client group), which allow an ombudsman operation to design a survey to draw out the information it wishes to evaluate. Web survey hosting services are inexpensive. In all, apart from staff time, the ICANN Office of the Ombudsman client survey cost less than \$100.00 and certainly provided evaluative, analytical, and strategic information worth many times that amount. The use of peer or third-party review of the results provides an optic of validity and credibility.

Similar survey tools can be developed for other clients, such as members of agency or organisation overseen by the ombudsman, or the cabinet, senior management, or directors or governors of these bodies. The key element for practitioners to consider in developing these survey tools is to ensure that

²⁹⁴ Contrary to the previous writings of Danet and Ayeni – see Chapter Two

²⁹⁵ See 6.5.25 for a discussion of confidentiality in the Ombudsman context

they gather measurable and relevant data that supports performance. The goal should not be simply to create a narrative popularity contest.

8.5.1 Implications for Ombudsman practitioners

The dissertation strengthens the evaluation blueprint by using information obtained from the test case and by making recommendations for evaluation. Client surveys can be helpful in the overall evaluation of an Ombudsman's operations and activities. Clients, after all, are the reason that entities create Ombudsman functions, and their opinions and feedback are therefore important to consider. 'Clients' is a generic term, which indicates the group of persons who access an Ombudsman's Office seeking to redress unfairness. This group will vary depending on the type of Ombudsman operation. Classical Ombudsmen will deal with citizens as whole; executive Ombudsmen will deal with members of a particular community who access services from some sort of entity; and organisational Ombudsmen will deal with clients who are members of the internal population of an entity, such as employees, students, patients, etc.

The manner, frequency, depth, and amount of surveying that an Ombudsman will wish to do with its clients are very contextual. It will vary with the type of Ombudsman, the geographic proximity, the willingness of the client group to participate, resources, and perceptions of risk of attribution.

Surveys may be conducted in a number of ways. The method engaging the client group to solicit feedback is limited only by the imagination and perseverance of the Ombudsman practitioner. Clients may be solicited to participate in online surveys²⁹⁶ by email; clients may be given calling cards

²⁹⁶ As an example, see <http://www.surveymonkey.com/>

with an online address; contracts can be established with research firms for telephone sampling; clients may be given mail-in forms following office visits; the whole community (including clients and non clients) may be surveyed, survey invitations or forms may be give with receipts, pay stubs, tax bills, annual reviews, or the sale of products.

A key behind successful surveying is for the practitioner to have a good understanding of the questions, “Why survey? What information or feedback do we hope to gain? How will this information add to an overall understanding of what the Office does?” In essence, the Ombudsman has to have some clear objective in mind in order to be able to craft relevant, reasonable, and understandable questions.²⁹⁷ In crafting the survey, the Ombudsman must also bear in mind the language of use, general literacy level, and cultural biases which may influence the responses from clients. Generally, if the survey is simple and user friendly, there will be a greater likelihood of obtaining accurate and meaningful results.

In formulating survey questions, Ombudsmen are urged to reflect on the evaluation question developed as part of the Results-based Management Accountability Framework (RMAF). There should be a relationship between the evaluation questions developed in the RMAF and the survey questions posed to clients. “If the survey questions don’t assist in responding to the evaluation questions, then why are you asking the survey questions?”

Without limiting the types of questions an Ombudsman may wish to address, and while bearing in mind that the context, goals, evaluation expertise and

²⁹⁷ An example of a client survey may be found at <http://www.icann.org/ombudsman/documents/client-survey-aug06.pdf>

resources available for individual practitioners, Ombudsmen may wish to survey clients on the following types of questions or themes:

- *Manner of accessing the Ombudsman* – this will help to determine your key points of contact, and areas where outreach may assist in raising awareness.
 - How did the client learn of the Ombudsman?
 - Personal referral
 - Previous visit
 - Website
 - Staff Referral
 - Media article
 - Google or Internet search
 - Word of mouth
 - Government representative
 - Others?
- *Ease of finding the Ombudsman* – this question helps to determine if your contact information is being accessed in the right place. Was it easy to find out how to contact the Ombudsman?
- *How long ago did the contact with the Office of the Ombudsman take place?* – Provides some context for the currency of issues?
- *Language use* – If your Office offers services in more than one language you may want to understand the languages used, qualitative questions about the level and satisfaction of service delivered or documents available. You may also wish to design questions to

consider time delays due to translation if a second language (or more) is used.

- *Jurisdiction* – surveying is an important way to validate statistics found in a case management system (if one is used). You may formulate questions to determine why clients contacted your office, and to design the question so that you can determine if the issues were inside of your jurisdiction or not.
- *Client satisfaction and expectations* – Ombudsmen may design qualitative questions which measure such components of Ombudsman operations as: confidentiality; timeliness; professional manner; respect; explaining the Ombudsman’s jurisdiction; in providing an appropriate referral; in updating or corresponding with client; and overall satisfaction. Baseline may be established using the correspondents’ expectations of service (the scale ranged from: not all; to expectations met; to better than I expected), or through numerical scaling (i.e. on a scale of 1 to 10 please tell us...). Correspondents should also be permitted to reply “N/A” or not applicable.
- *Client’s Option* – there are two key questions that can be asked in surveys to help an Ombudsman understand impact:
 - If you did not have the option to correspond with the Ombudsman about your issue, where would you have gone to get help? and:
 - After the Ombudsman corresponded with you at the end of his work, what did you do?

For example, clients may have indicated in responding to the first question that they would have filed a lawsuit if the Ombudsman was

not available. If they did not indicate in responding to the second question that they had filed a law suit, then it may be fair to say that the presence of the Ombudsman helps to reduce litigation.

- *Results* – questions designed to help understand, from the clients point of view, what happened as a result of interacting with the Ombudsman:
 - What was the result of your communication with the Ombudsman?

Possible answers may include: Other (narrative open responses); Ombudsman took action and the issue was resolved; the Ombudsman declined to investigate; I was referred to someone else; the complaint was investigated; I received self-help information; and, I withdrew my complaint.
 - If you received a referral or self-help information from the Ombudsman, did it assist you in resolving the matter?

The results of this question may be correlated with the answers from the previous one indicating “I was referred to someone else”. This question helps to determine whether the referrals provided are helpful.
- *Tools and Documentation* – the survey may provide insight as to what documentation (i.e. Annual Report) or what communication tools (i.e. Website, blog, brochures) the clients accessed, and what opinions they have on these.
- *Recommendation* – this question is a barometer of overall satisfaction. Obviously, if clients indicate that they would recommend others to come to the Office of the Ombudsman, it is a sign of client satisfaction.

- Would you recommend the Office of the Ombudsman to someone else (your agency, entity, company etc) who had a related issue to resolve?
- *Demographics* – consistent with law and policy, and in consideration of the nature of the Office, the Ombudsman may wish to gather information about the demographic make up of clients.
- *Open Ended Narrative* – Ombudsmen may wish to provide the opportunity for clients to express comments which may not otherwise have been solicited in the survey.
 - Is there anything else you would like to add to assist our evaluation of the Office of the Ombudsman?

Chapter Nine

Revisiting the RMAF

9.1 Introduction

The preceding chapters developed a basic framework of tools that can assist ombudsman practitioners to conduct an evaluation of the formation of their offices and client–stakeholder satisfaction. These chapters used the ICANN Office of the Ombudsman as a test agency to determine whether the methodologies are appropriate, relevant, and possible. These Chapters have contributed to an overall evaluation blueprint which leads to an outcome document, “A Practitioner’s Guide to Evaluating Ombudsman Office”, found at Appendix 11. In sum, the previous chapters conducted a mid-term, or formative evaluation of this Office.

The research in this chapter considers the next logical step in the evaluation process: to revisit the results-based management accountability framework (RMAF). The goal of this chapter is to determine whether the hypotheses, evaluation questions, and performance indicators formulated in the RMAF sufficiently address the actual circumstances of the organisation under review, and what improvements can be made. This chapter continues to use the ICANN Office of the Ombudsman as a test case. The Chapter considers the lessons learned from this review as part of the overall ombudsman evaluation blueprint.

9.2 Reviewing the evaluation questions and performance criteria

Chapter Three and Appendix 2 detail both the development and content of the RMAF. The table at the end of this chapter²⁹⁸ summarizes the evaluation questions and the performance criteria. The performance criteria are scheduled along three timelines: ongoing, formative, and summative. The purpose of this chapter is to review those questions and indicators to determine whether the evaluation, thus far, has sufficiently addressed these matters, and to analyze whether the RMAF needs to change the issues considered in the summative evaluation.

9.2.1 Relevance – Is there an ongoing need for the Office of the Ombudsman?

Four performance criteria respond to this evaluation question.

9.2.1.1 Case Management Statistical Analysis

The first evaluation question deals with the data that is drawn from the case tracking statistics. It deals with the volume of complaints, the types of complaints received, and the types of resolutions thereof. These statistics are reported on a monthly basis, and are included in the Office of the Ombudsman Annual Report. Chapter Seven of this dissertation discusses this performance measure by a comparison with other ombudsman operations and their statistics.

The research concludes that the volume of complaint intakes is significant, likely greater than the organisation would have expected when the Office was formed. The volume of in-jurisdiction complaints is equal to or greater than

²⁹⁸ ICANN Office of the Ombudsman, 2005, **Results-based Management Accountability Framework**, <http://www.icann.org/ombudsman/documents/rmaf-08feb05.pdf> (accessed January 28, 2007) pp10–11

other Ombudsman institutions. The volume of in-jurisdiction complaints where action is taken by the Ombudsman to facilitate resolution is significant. This means that the Ombudsman's time is often spent assisting members of the Internet community with matters that have nothing to do with the Office of the Ombudsman or ICANN.

The Ombudsman receives a high volume of complaints or contacts from Internet users that are outside either his or ICANN's jurisdiction. As is summarized in the various third-party reviews (Appendices 5, 7, 10), the Ombudsman provides services to these complainants by making helpful referrals to appropriate authorities. From November 1, 2005, to October 15, 2007, 197 out of 2210 complaints received were within the Ombudsman's jurisdiction. Of this number only one complaint was escalated to the Board Reconsideration Committee, and none resulted in litigation. The research further concludes that the volume and resolution of complaints warrants a continued need for the Ombudsman.

9.2.1.2 Media Mentions

Media analysis is ongoing and is reported in the Ombudsman's Annual Report. The vast majority of media reports and blog entries have been positive with respect to the Ombudsman. The few critical reports have dealt with the perception of the Ombudsman's limited jurisdiction and inability to deal with issues concerning domain name registrants and their registrars on commercial issues. This was especially evident in early 2007, when there were calls for the Ombudsman to intervene on behalf of consumers when a registrar failed. No media articles have called for a cancellation of the Office

or for a change of Ombudsman. This may allow the RMAF to conclude that there is a positive view of the existence of the Office of the Ombudsman in the media, and that this supports a continuation of the Office.

9.2.1.3 Community Perception of the need for an Ombudsman

One performance indicator is to be measured by survey during the summative or final evaluation period. However, while this question has not been directly posed during the formative evaluation survey (Chapter Eight, Appendices 8, 9, 10), there have been a number of anecdotal or narrative responses to the criteria. These range from the very positive and supportive to the negative and unsupportive. As was described in Chapter Eight, there is a direct relationship between jurisdiction, outcome, and satisfaction. The research has shown that the less positive comments come from parties whose complaints were not in the Ombudsman's jurisdiction. At the same time, those non-jurisdictional complaints tend to demand an enlargement of the Ombudsman's jurisdiction to deal with matters such as the commercial relationship between registrars and registrants.

9.2.2 Management – Does the Ombudsman have the necessary resources to complete the mandate?

Three performance indicators respond to this evaluation question:

9.2.2.1 Does the Office of the Ombudsman complete activities and outputs as planned?

This performance indicator is scheduled to be considered during the formative evaluation. The ICANN Office of the Ombudsman is characterized as a sole practitioner operation. While it may be considered to be so in the conduct of Ombudsman complaint resolution, it is intertwined with the ICANN bureaucracy. The Ombudsman is reliant on ICANN support for general administration, financial services, publications management, and public meeting arrangements.

The Office of the Ombudsman appears to complete investigations, reports, and assignments in a timely manner. However, there have been examples of work which were delayed in either: (1) the administrative process within ICANN; or (2) in the handling of Ombudsman reports by supporting structures. While not critical to the operation of the Office, these delays may impact the Office's reputational value. If the delays had been significant, then it might impact on the effectiveness of the Office.

For example, in 2006 the Ombudsman Annual Report was held up almost four months in the ICANN administrative process. It was, however, ready in time to be presented to the Board of Directors at their annual meeting. Unfortunately, the delays with the ICANN administration inflated the final translation costs by a factor of seven.

As well, two reports by the Office of the Ombudsman were delayed in resolution by tardy responses by ICANN and its supporting structures.²⁹⁹ The ICANN Ombudsman Framework calls for a response to Ombudsman recommendations by the organisation within 60 days following the next Board meeting after the report is tabled. In one case there was no reply for almost nine months, and in a second case, the reply took over four months.

9.2.2.2 Perception of sufficient resources

The ICANN Ombudsman is a sole practitioner. There is an adjunct ombudsman who answers complaints when the Ombudsman is on vacation or sick leave. In the 2006 Annual Report, the Ombudsman informed the Board of Directors of his intention to request additional funding to bring the adjunct to a half-time equivalent position. A budget submission to that effect prepared by the Office of the Ombudsman was rejected by the Board Finance Committee in April 2007.

In 2004, One World Trust³⁰⁰ was contracted to review ICANN's accountability and transparency. One World Trust made the following recommendation with respect to the Office of the Ombudsman:

The Ombudsman plays an important role within ICANN as an informal alternative dispute resolution mechanism. Since its formation, it has reduced the number of complaints handled through the formal complaint channels of the Reconsideration Committee. As the Ombudsman's office continues to reach out to the community and

²⁹⁹ See <http://www.icann.org/ombudsman/reports.html>

³⁰⁰ "The One World Trust promotes education and research into the changes required within global organisations in order to achieve the eradication of poverty, injustice and war. It conducts research on practical ways to make global organisations more responsive to the people they affect, and on how the rule of law can be applied equally to all. It educates political leaders and opinion-formers about the findings of its research." One World Trust, **About Us**, www.oneworldtrust.org/index.cfm?display=about (accessed June 22, 2007)

raises awareness of the function within the ICANN community, there is the distinct possibility that the number of complaints it has to handle will increase. The office's user group is the entire Internet community, yet it is currently staffed by a single full time Ombudsman and an adjunct Ombudsman that provides holiday cover. To ensure the continued effectiveness of the office, ICANN should continue to support the Ombudsman through the adjunct Ombudsman and also consider recruiting an additional full time member staff to provide administrative support to the office.

Recommendation 4.3: ICANN should consider strengthening the capacity of the Ombudsman's office by recruiting full time administrative support for the Ombudsman.³⁰¹

ICANN's response to the One World Trust report includes the following statement regarding this recommendation:

ICANN will work with the Ombudsman's office to determine the necessity for additional staffing given Budget considerations and the current review of administrative support being undertaken by the ICANN management.³⁰²

Thus, there appears to be a divergence of opinion between the Office of the Ombudsman, One World Trust, and the Board Finance Committee regarding sufficient resources for the Office. While finances have been cited as the reason for not increasing staff or administrative support, the Ombudsman notes that the cost overrun on the production of the 2006 Annual Report

³⁰¹ One World Trust, 2007, **Independent Review of ICANN's Accountability and Transparency – Structures and Practices** <http://www.icann.org/transparency/owt-report-final-2007.pdf> (accessed April 15, 2007) p29

³⁰² ICANN, 2007, **ICANN Response to One World Trust Review of ICANN's Accountability and Transparency — Structures and Practices** <http://www.icann.org/transparency/mop-update-07jun07.htm> (accessed June 10, 2007)

would have been sufficient to offset the salary costs of a half-time equivalent Ombudsman assistant.

This performance indicator was evaluated with respect to the formative evaluation, as scheduled. However, due to the divergence of opinion concerning Ombudsman staff support, it should also be scheduled for review during the summative evaluation.

9.2.2.3 Case Backlog

There has not been a backlog of cases at the Office of the Ombudsman. This is due to a very efficient case handling protocol. A review of complaints indicates that the Ombudsman does an initial review and generates a first response to complainants in the first 24 hours following the complaint. Chapter Seven, Statistical Comparison, evidences this in comparison with other ombudsman operations. However, as the One World Trust points out, “there is the distinct possibility that the number of complaints it has to handle will increase.”³⁰³ The presence of a case backlog would be an indicator.

9.2.3 Programme Delivery

This section of the RMAF contains three evaluation questions and three performance criteria. They are all scheduled for evaluation in the formative and summative evaluations.

9.2.3.1 Has the Ombudsman established effective working relationships?

³⁰³ One World Trust, 2007, **Independent Review of ICANN's Accountability and Transparency – Structures and Practices** <http://www.icann.org/transparency/owt-report-final-2007.pdf> (accessed April 15, 2007) p29

There is an assumption, untested by this research, that the Ombudsman has established effective working relationships with the Board, staff, the ICANN community, and the ombudsman community. The Board of Directors engaged Mr. Ben Willis, a former senior executive of Apple Corporation, to conduct a 360 review of the Ombudsman for the Board's Compensation Committee, and the results of that survey indicate that there are positive relationships between the Ombudsman and ICANN.³⁰⁴ Further, the Ombudsman's participation in a range of related activities (International Forum on Online Dispute Resolution and various ombudsman associations) indicates that effective relationships have been built across the wider community. This performance criterion is satisfied for the formative evaluation, and is scheduled for further review with the summative evaluation.

9.2.3.2 Is ICANN effectively dealing with Ombudsman recommendations?

As noted in 9.2.2.1, ICANN has not responded to Ombudsman recommendations in a timely manner. It is likely that the Board will appoint an Ombudsman Committee in the future to deal with the management of Ombudsman recommendations. Doing so will ensure that the organisation has some oversight by the Board, and also ensure timely consideration of the recommendations. One World Trust notes: "A commitment to provide timely response is important because it prevents protracted processes and also

³⁰⁴ Confidential, uncirculated report

ensures the complainant is not forced to wait for a response an unnecessarily long period of time.”³⁰⁵

This criterion is satisfied for the formative evaluation. It is also scheduled for evaluation in the summative review, and as there is room for improvement in this area, its evaluation will be an important factor in the next evaluation round.

9.2.3.3 Does the presence of the Ombudsman reduce the potential for litigation?

The client satisfaction survey is the best reference for this criterion. Chapter 8.1.9 noted that people who contacted the Ombudsman were less likely to contact legal counsel for representation than they would if they had not contacted the Ombudsman.

The results of the client satisfaction survey indicate that the presence of the Office of the Ombudsman may reduce litigation. Since the inception of the Office of the Ombudsman there has been a steady and dramatic reduction in the number of demands placed before the Board Reconsideration Committee.³⁰⁶ The Office of the Ombudsman has handled 197 jurisdictional complaints the same time that the volume of complaints to the Reconsideration Committee has dropped. These results may indicate that the Office of the Ombudsman is effective as an alternative to formal dispute resolution processes. Only one case reviewed by the Ombudsman was

³⁰⁵ One World Trust, 2007, **Independent Review of ICANN's Accountability and Transparency – Structures and Practices** <http://www.icann.org/transparency/owt-report-final-2007.pdf> (accessed April 15, 2007) p30

³⁰⁶ See <http://www.icann.org/committees/reconsideration/> in 2000, there were 16 Reconsideration Requests; since November 2004, when the Ombudsman was appointed, there have been 6. There were none in 2007.

escalated to the Board Reconsideration Committee, and the Committee's decision was consistent with the Ombudsman's determination that the matter was unfounded. No case that has come through the Ombudsman process has been escalated to litigation.

9.2.4 Cost Effectiveness

There are two evaluation questions with three performance criteria which contribute to an understanding of the Ombudsman's cost effectiveness. These are important considerations in the evaluation process as an Ombudsman operation which is not effective in the allocation of its budget and resources may lose credibility with its stakeholder group.

9.2.4.1 Effective Budgeting and Cost Reductions

Over the first two fiscal years of operation, the Office of the Ombudsman reached the year end with a budget surplus. In 2006–2007, the Office of the Ombudsman was slightly over budget. This is due in large part to cost overruns in the administrative handling of the Ombudsman's Annual Report. The Ombudsman has obtained a scale of economy in the bulk purchase of airline tickets between Vancouver and Los Angeles.

The Office of the Ombudsman has made recommendations that led to systemic improvements at ICANN. These have, in turn, led to cost savings. As noted in 9.2.3.3, there was a significant reduction in matters being referred to formal dispute resolution systems such as the Board Reconsideration Committee and litigation. This also constitutes an economic savings to the organisation.

Table 9.1 – Ombudsman Activity and ICANN Cost Reduction

Ombudsman Activity	ICANN Cost Reduction
Receives and investigates complaints	Reduction of cases to Board Reconsideration Committee and litigation
Ombudsman acts as central point of contact for complaints	Reduced staff time on complaints
Ombudsman Outreach	Direct access to Ombudsman by complainants, as opposed to using a lawyer

This criterion has been satisfied with respect to the formative evaluation. It will be re-evaluated during the summative evaluation.

9.2.4.2 Is the present Ombudsman model the most cost effective for ICANN?

This has been an ongoing evaluation item since the inception of the Office of the Ombudsman. There is only one potential alternative to the present in-house ombudsman model, and that is to have an external contract ombudsman service fill the role. There are a number of potential pitfalls to this model. First, the documented number of cases indicates that any potential cost savings would be eradicated by contractors' fees. Second, as ICANN's mandate concerns specific technical management of the domain name system, a set of governance principles established by the bylaws, and a well-defined group of stakeholders in combination with a large, undefined potential user group, the development of programme and technical knowledge, personal relationships with staff, Board of Directors, and the community, and reputational value become very important. These are likely not possible using a contracted ombudsman service.

It is possible that, once protocols are well established, the Office of the Ombudsman may be transformed in the future. This may include the

contracting out of complaint reception and triaging by an outside contractor. As many of the issues raised to the Office of the Ombudsman are non-jurisdictional, it may be possible to consider the use of a body such as the Canadian Financial Services Ombudsman Network Call Centre to screen and respond to non-jurisdictional issues, i.e., registrar–registrant complaints. The Ombudsman would then deal only with jurisdictional issues. This could be accomplished with a contracted party, if that party can demonstrate the requisite knowledge of ICANN, its governance structures, and policy development, and the party had developed significant relationships with the community, staff, and Board of Directors.

This dissertation recommends that the model could change in the following circumstances: that the summative evaluation period was complete, and that the incumbent Ombudsman is considered the contracted Ombudsman. The rationale behind these caveats is that by the time of the summative evaluation, that is to say five years in operation, there will be a solid understanding the significant issues surrounding the Office of the Ombudsman, such as the number of jurisdictional issues and the cost and effort to resolve these issues. A five-year period of operation will accrue enough experiential data to determine issues such as the overall need for translation, outside expert opinions, and so on. Second, the incumbent Ombudsman is the obvious choice to continue acting as the contracted, as opposed to, in-house Ombudsman, due to his operational knowledge and relationships. Third, to move the Ombudsman operations from an in-house to a contracted model prematurely may have a strong negative impact on the organisation’s reputational value. Fourth, this recommendation is tempered by

an evaluation of the volume of jurisdictional issues. Should the volume of jurisdictional issues referred to the Ombudsman warrants the continuation of an in-house Ombudsman, this would demand the obvious continuation of the present model.

9.3 Summary

This chapter demonstrates the importance of returning to fundamental evaluation documents such as the RMAF during the evaluation process to ensure that evaluation questions and performance criteria meet the circumstances of the office being evaluated. Ombudsman offices can grow, mandates can expand or change, and governance structures may be altered. It is critical that RMAF be treated as an evergreen document. It must remain current to the state of affairs for the office being evaluated.

The review of the RMAF demonstrates that the evaluation questions and criteria formulated at the time of inception were relevant and meaningful. Two inter-related performance criteria should be amended for review during the summative evaluation. The Ombudsman's resources and the potential models for Ombudsman should be reviewed in 2009 to determine any staffing or resource gaps or whether any models for contracted services may apply. Finally, the development of a Board Ombudsman Committee and improved ICANN performance with respect to the handling of Ombudsman recommendations should be reviewed in the summative evaluation. Based on all of the above, the research is satisfied that the formative evaluation process is complete, accurate, and meaningful. The ICANN Office of the Ombudsman is well formulated and has demonstrated performance that

meets the RMAF. John Zinsser, the third-party reviewer of the various ombudsman evaluations, states:

The ICANN Office of the Ombudsman has developed and initiated the single most complete, deliberate, and meaningful assessment process deployed in the ombuds field to date. This process allows the Office to accurately declare it is structured to, and appears to function as, an ideal executive ombuds on behalf of the ICANN community.³⁰⁷

9.3.1 Implications for Ombudsman Practitioners

This Chapter has augmented the overall ombudsman evaluation framework by introducing the concept of a reflective analysis of the evaluation plan. The revisiting of the evaluation plan, at some time frame near the formative evaluation, allows the practitioner to update the evaluation plan; and to be responsive to changes that impact the operations of the office, or the evaluation framework, and to adjust the plan for future analysis. These could include such factors as changes in mandate; funding; community structure; legislation; personnel; and technology.

³⁰⁷ Zinsser, John, 2006, **Comment on the Internet Corporation for Assigned Names and Numbers Office of the Ombudsman Client Survey Report** <http://www.icann.org/ombudsman/documents/csr-commentary-jun07.pdf> (accessed June 15, 2007) p24

Table 9.2 – Evaluation Questions and Performance Indicators

Evaluation Questions	Performance Indicators	Data Sources	Who does?	Ongoing	Formative	Summative
Relevance						
Is there an ongoing need for the Office of the Ombudsman?	# of people using Ombudsman services (call centre, website, complaint form etc) # and type of complaints # and type of resolutions	Trend analysis	Ombudsman	x		
	# and type of media mentions that focus on the Office of the Ombudsman	ICANN media files	Communications	x		
	% of complainants/community who agree there is a need for the Ombudsman	Consumer surveys	ICANN			x
	% of complainants/community who know of an alternative to resolving a complaint if Ombudsman did not exist	Consumer surveys	ICANN			x
Management						
Is the Office of the Ombudsman resources sufficient to carry out its mandate?	Activities and outputs completed as planned	Analysis of planned vs. actual activities and outputs	Ombudsman		x	
	Perception that Ombuds has sufficient resources	Interview Board, staff, Ombuds	Ombudsman, ICANN		x	
	Inventory and backlog of Ombuds files	Trend analysis using Case management system	Ombudsman	x	x	x

Evaluation Questions	Performance Indicators	Data Sources	Who does?	Ongoing	Formative	Summative
Programme Delivery						
To what extent has the Ombudsman established effective working relationships?	With Staff, Board, Supporting Agencies, Registries, Registrars, and the ICANN community in general	Interviews with stakeholders	Ombudsman, ICANN		x	x
Are ICANN staff and Board dealing with identified issues in a timely manner?	# of cases requiring staff or board intervention	Review Case Management system	Ombudsman		x	x
Has there been a change in behaviour on the part of ICANN or a complainant to avoid litigation?	# of cases resolved by Ombudsman which could have gone to litigation	Review Case Management system	Ombudsman		x	x
Cost effectiveness						
Has the Ombudsman been cost effective in delivering the programme?	Savings as a result of bulk airfare purchases, prudent purchasing of equipment, etc	Review of financial data	Chief Financial Officer		X	X
	Actual or potential improvements, efficiencies, or cost savings in ICANN programme delivery or administration		Ombudsman	X	x	x
Are there cost effective alternatives?	Are there other models of Executive Ombudsman which ICANN could employ?	Research	Ombudsman	x		

Chapter Ten

Planning the Summative Evaluation

10.1 Introduction

The preceding chapters dealt with the development and analysis of current and recent evaluations, using the ICANN Office of the Ombudsman as a test entity. This developmental and analytical process constructed an evaluation blueprint through to the end of the formative evaluation. This chapter takes observations, especially those from Chapter Nine, in concert with the RMAF, and attempts to develop a plan for the summative, or final, evaluation of an ombudsman's office.

10.2 Summative Evaluation

The Treasury Board of Canada Secretariat defines summative evaluation in the following terms:

The second is after a policy, program or initiative has been in place long enough to realistically expect that some outcomes may have been achieved (e.g., normally within five years of policy, program or initiative start-up), and the focus of the questions is on the degree to which these outcomes have been achieved as well as to determine the contribution of the policy, program or initiative to these achieved outcomes (often called summative evaluations).³⁰⁸

The summative evaluation for the ICANN Office of the Ombudsman is scheduled for fiscal year 2009–2010, or five years after the Office began operations. The categories of questions consider the broad-based evaluation of the Office of the Ombudsman. These include questions such as:

Is it relevant to have an ombudsman in the organisation?

³⁰⁸ Treasury Board Secretariat, 2001, **Guide for the Development of Results-based Management and Accountability Frameworks** http://www.tbs-sct.gc.ca/eval/pubs/rmaf-cgrr/rmaf-cgrr04_e.asp (section 3.4.1) (accessed July 15, 2007)

- Is the ombudsman program well managed with enough resources to get the job done?
- Is the program properly delivered?
- Does the program increase value or increase cost effectiveness?³⁰⁹

Table 9.2 at the end of Chapter Nine lists the RMAF's evaluation questions and performance criteria that support these broad-based concepts. The following evaluation questions or performance criteria are scheduled for review in the summative evaluation:

1. Relevance – Complainants or community members who agree there is a continued need for the ombudsman
2. Relevance – Complainants or community members who know of an alternative to resolving a complaint if an ombudsman did not exist
3. Management – Are there sufficient resources – inventory and backlog of ombuds files?
4. Program delivery – To what extent has the ombudsman established effective working relationships?
5. Program delivery – Is ICANN staff and Board dealing with identified issues in a timely manner?
6. Program delivery – Has there been a change in behaviour on the part of ICANN or a complainant to avoid litigation?
7. Cost effectiveness – Has the ombudsman been cost effective in delivering the program? and

³⁰⁹ ICANN Office of the Ombudsman, 2005, **Results-based Management Accountability Framework**, <http://www.icann.org/ombudsman/documents/rmaf-08feb05.pdf> (accessed January 28, 2007)pp11-12

8. Cost effectiveness – Are there actual or potential improvements, efficiencies, or cost savings in ICANN program delivery or administration?³¹⁰

The RMAF review in Chapter Nine points out one evaluation question and one performance criteria which were scheduled to be completed with the formative evaluation, and which should be re-examined during the summative evaluation. The question and criteria are:

1. Are there sufficient resources for the Office of the Ombudsman to carry out its mandate?
2. Are there other models of executive ombudsman which ICANN could employ?³¹¹

Finally, the RMAF review (see 9.2.3.2), which looks at ICANN's effective handling of the Ombudsman's reports and recommendations, indicates that ICANN has been slow, at times, to deal with the consideration of the Ombudsman's recommendations. This performance criterion is scheduled for review in the summative evaluation, and the review should look for an improved performance in this area.

10.3 Summative Evaluation Process Methodology

The methodology for the summative review involves five specific avenues of investigation:

- Client surveys;
- Interviews;
- Case and trend analysis;
- Environmental scan of formal dispute resolution mechanisms;
- Review of contemporary literature.

³¹⁰ ICANN Office of the Ombudsman, 2005, **Results-based Management Accountability Framework**, <http://www.icann.org/ombudsman/documents/rmaf-08feb05.pdf> (accessed January 28, 2007) pp11–12

³¹¹ Ibid pp11–12

10.3.1 Client Surveys

Client surveys may be used to evaluate the broad-based question concerning the relevance or continued need for the Office of the Ombudsman. While there are two performance criteria to be considered (numbers 1 and 2 on the previous page), the survey can gather more expansive information on a range of information concerning the Office of the Ombudsman. This will be of particular value if ongoing, formative, and summative surveys can be cross-referenced, as this will provide broad-spectrum view of issues presented.

The ICANN Office of the Ombudsman conducted a client survey as part of the formative evaluation process. That survey is being continued on an ongoing basis. A client survey conducted in conjunction with the summative evaluation may be based on the existing survey, and in consideration of the recommendations of the third-party reviewer found in Appendix 10.

Analysis of a client survey must focus on answering the broad question of whether there is relevance or a perception of need for clients on the continuation of the Office. The analysis should not only be based on the summative evaluation, but also in comparison with results obtained in the formative and ongoing periods.

10.3.2 Interviews

Interviews with staff, members of the Board of Directors, stakeholders such as registrars and supporting organisations, and peer ombudsmen may prove to be informative in determining whether the Ombudsman has established effective working relationships (performance indicator 4 above). Interviews may also provide commentary that facilitates or encourages qualitative analysis during the summative evaluation.

To conduct these interviews to maintain ombudsman neutrality, impartiality, and independence, and to encourage and protect the anonymity of respondents, the methodology for the ICANN Office of the Ombudsman will involve the use of third party interviewers. The evaluation plan creates a win-win scenario in conjunction with the Strauss Institute for Dispute Resolution at Pepperdine University in Malibu, California. Strauss offers a Masters in Dispute Resolution, and learners are required to do a number of externships, each 120 hours long. The ICANN Office of the Ombudsman has a collegial relationship with Pepperdine. The use of masters' learners, who would have requisite analytical skills, would accomplish goals for both parties. The ICANN Ombudsman would benefit from cost-free analysis from highly educated and motivated learners. In return, the externs would benefit from goal oriented project work in a conflict resolution system. Importantly, they would be empowered to design and implement the interview and analysis project in conjunction with a steering group from the Office of the Ombudsman.

10.3.3 Case Management System and Trend Analysis

The case management system and trend analysis will provide information on several performance indicators (indicators 3, 5, 6, 7, and 8). Analysis of trends and cases will inform the Office of the Ombudsman of some indicators of efficiency, effectiveness, and impact. As the case management system is automated, this activity will not be time consuming.

In particular, it will be significant during the summative evaluation to monitor the ratio of jurisdictional to non-jurisdictional complaints. This will partially demonstrate the effectiveness of the outreach programme and tools such as the Ombudsman website and blog in informing the community of the Ombudsman's role, function, and mandate.

10.3.4 Environmental Scan of Formal Dispute Resolution Systems

The environmental scan will look at both internal and external dispute resolution systems, and analyze whether the Office of the Ombudsman may be a contributing factor in the reduction of disputes that are escalated to a formal rules-based process. Internal systems would include the Board Reconsideration Committee and the Independent Review Process. External dispute resolution systems would involve litigation or arbitration for contractual agreements between ICANN and other parties such as registrars. This environmental scan will provide information on performance indicator 6. This scan, in conjunction with client surveys, may also help to identify any system users who remain in dispute with the organisation, but who do not pursue other redress systems.

10.3.5 Literature Review

During the summative evaluation, the assessors should conduct a review of contemporary literature to determine any developments that affect the construction of the final evaluation.

10.4 Summary

This Chapter has provided information on designing and planning the summative evaluation, which adds to the capacity of the overall ombudsman evaluation blueprint. The summative evaluation occurs when a programme has been in place for a period of time adequate to reach outcomes or goals or, in the case of an Ombudsman programme, adequate to influence an institution or system. The summative evaluation should consider any issues left unresolved after the formative evaluation. Generally, the summative evaluation will require less data collection and analysis than the formative evaluation.

The summative evaluation is the last step in the evaluation process established in the RMAF. Once it is complete, so is the evaluation cycle.

Chapter Eleven

Implications for Ombudsmen and Conclusion

11.1 Introduction

There is a paucity of literature or experience over the past 30 years in the area of the evaluation of Ombudsman offices. This has been demonstrated by the literature review and from quotations from the literature.

Danet, in the conclusion to her 1978 paper states, “Not easily measured is the ombudsman’s success in probably his most important functions; to serve as a symbol of the possibility of justice for the ordinary person, and to inspire members of the civil service to maintain a high level of commitment to their work.”³¹²

Ayeni, in his 1993 follow-up article states about Danet, “After about fifteen years, this article remains the most comprehensive and authoritative attempt to articulate an evaluatory framework for the ombudsman plan ... As a matter of fact, all other efforts so far rehearse Danet’s measures or clearly fail to improve on her efforts.”³¹³

Dr. Male, in her 1999 dissertation states that her “research proposed a preliminary step in building a general evaluation framework that could rapidly assess various types of public ombudsman offices and provide insight into the context of the organisation and its readiness for more comprehensive evaluation.”

This dissertation has added new information into the body of literature concerning the ombudsman. By creating a blueprint for long-term evaluation plans, and by introducing low-cost, uncomplicated, and time-efficient evaluation tools, the

³¹² Danet, Brenda, 1978, **Towards a Method to Evaluate the Ombudsman Role**, Administration & Society 1978; 10; 335, Sage Publications p364

³¹³ Ayeni, Victor, 1993, **Evaluating Ombudsman Programmes**, in **The Ombudsman Journal**, Edmonton, AB, pp67–88 (pp68–69)

dissertation has also added to ombudsman's ability to demonstrate value, argue for resources, or identify gaps.

The implication for the ombudsman community from this research is that there are now easily accessible tools which practitioners may use to evaluate their operations. It implies that ombudsmen are tangibly able to demonstrate a well-formulated operation and plan, and overall value and contribution to the state, government, agency, corporation, or organisation which it serves or oversees.

An important implication to emphasize from this research is the idea of using a peer ombudsman to assist with another's evaluation. For example, an ombudsman from one university may provide commentary on another university ombudsman's self assessment using the "Fifty Questions for Self Evaluation" tool in Appendix 6. The use of peer practitioners supports independent third party review, and this peer evaluation may also reduce cost and provide a certain level of trust with respect to handling the confidential information which may be accessed by the peer evaluator.

A further implication is that this dissertation is not a point-finale in the development of the ombudsmen's shared experience of understanding their work, demonstrating the value of their work, and communicating that value to others. While this research is a step forward, the community of ombudsmen (classical, organisation, executive, and advocate) must continue to develop contemporary standards and strategies. When Danet was writing her seminal paper in 1978, it was impossible to have foreseen the changes in and the impacts of the use of information technology to conduct the business of business, the business of government, or the business of ombudsmanship.

Dr. Male, writing her dissertation in 1999, could not have predicted the impact of the failure of Enron and other corporations in the United States. These failures of business and corporate trust saw demands on corporate America by the *Public Company Accounting Reform and Investor Protection (Sarbanes Oxley) Act*, and Securities Exchange Commission Sentencing Guidelines. This has led to an expansion of internally and externally focused ombudsman operations dealing with employee matters, corporate governance, and consumer relations.

Ayeni, writing his paper in 1993, could not have predicted the demands placed on financial institutions to have ombudsmen dealing with financial consumer matters. There are financial services ombudsmen across the globe who now represent individual financial institutions, central banks, or regulatory frameworks. None of these authors could have predicted the increasing shift of commercial matters away from court processes into industry-sponsored resolution schemes.

All this implies that considerations for evaluation are not static. Ombudsmanship, and the environment in which it operates, is dynamic. Therefore, the evaluation of an actor in a changing environment must also be dynamic. It must be tailored to the type of ombudsman programme, budgets, and the target audience of the review.

11.2 Dissertation Objectives

The objectives of this dissertation, as defined in Chapter 1.2, are:

... to design and develop a set of generic tools which an Ombudsman could use to investigate the effectiveness of their own operations. These tools are developed through an international literature review, and the modeling and testing of an evaluation process in the ICANN Office of the Ombudsman.

These evaluation tools will provide ombudsman practitioners the ability to evaluate issues such as: the basis used to apply fairness concepts in their operations; determine levels and perceptions of independence, neutrality, and confidentiality; gauge the effectiveness of operations; accessibility; and the efficient handling of cases and case volumes. These several evaluation tools will be defined and their applications evaluated throughout this dissertation.

11.3 Research Outcomes

The following ombudsman evaluation tools have been developed and tested in the research:

- Results-based management accountability framework designed for ombudsman operations;³¹⁴
- Ombudsman logic model;³¹⁵
- Fifty Questions for Self Evaluation;³¹⁶
- Client survey;³¹⁷
- Comparisons of ombudsman operations;³¹⁸ and
- Analysis of applicability of ISO standards for ombudsman operations.³¹⁹

Appendix 11 to this dissertation, *A Practitioner's Guide to Evaluating Ombudsman Offices*, was written as a stand-alone, self-help guide for ombudsmen who wish to use its information to develop their own evaluation frameworks. It is intended to be published as a separate document for that purpose.

The following two graphics present some of the key findings of the research:

³¹⁴ See Chapter 3.2 and Appendix 3

³¹⁵ See Chapter 3.2.2 and Appendix 3

³¹⁶ See Appendix 2 and Appendix 11

³¹⁷ See Chapter 8 and Appendices 7, 8, and 9

³¹⁸ See Chapter 7

³¹⁹ See Chapter 4



Figure 11.1 – Satisfaction Gap

Based on survey results and Figure 8.1, Expectations Linked to Jurisdiction and Outcome, Figure 11.1 demonstrates a satisfaction gap that ombudsman should be aware of. Despite the low sample size, it appears that there is a direct relationship between the jurisdiction–outcome of a complaint and a client’s satisfaction level. The satisfaction gap is the divergence between the client’s actual and potential levels of satisfaction at the end of an ombudsman process. The survey findings in this research, and Harrison’s writings on client satisfaction,³²⁰ would indicate that high jurisdiction–high outcome complaints create higher levels of satisfaction than low jurisdiction–low outcome complaints. Therefore, when surveying client satisfaction, ombudsmen should be aware a preponderance of low jurisdiction complaints or contacts likely decreases overall satisfaction levels,³²¹ or that some clients may be more likely to be dissatisfied than others.

³²⁰ Harrison, Tyler, **What is success in the Ombudsman Process? Evaluation of a University Ombudsman**, Conflict Resolution Quarterly, (Vol 21-3, pp313–335) Spring 2004

³²¹ ICANN Office of the Ombudsman, 2007, **2007 Annual Report**

The validity of this hypothesis was tested when it was presented to the membership of the United States Ombudsman Association at its 2007 conference.³²² At that conference a number of classical or governmental ombudsmen agreed with the hypothesis and provided anecdotal evidence of their own experiences with high jurisdiction–high outcome satisfaction versus low jurisdiction–low outcome satisfaction.

Finally, Mr. John Zinsser commented on this hypothesis in his third-party review of the ICANN Ombudsman client survey. Zinsser states, “This is a potential field critical discovery.”³²³

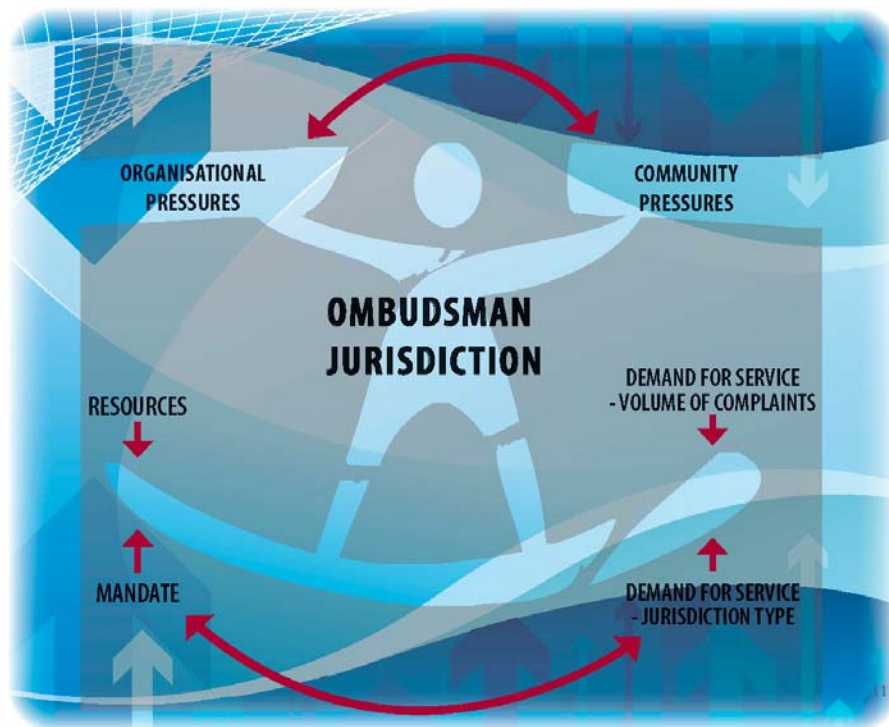


Figure 11.2 – Factors Impacting Ombudsman Performance

³²² Anchorage, Alaska, September 27, 2008

³²³ Zinsser, John, 2007, **Comment on the Internet Corporation for Assigned Names and Numbers Office of the Ombudsman Client Survey Report** <http://www.icann.org/ombudsman/documents/csr-commentary-jun07.pdf> (accessed June 15, 2007) p10

Figure 11.2 shows factors or pressures that impact on ombudsman operations. The figure centers on the ombudsman jurisdiction, which is established by statute, appointment, policy, or corporate or municipal bylaw. Community pressures which may impact the ombudsman's operations include the volume of complaints, or the demands for service, made upon the ombudsman, and the complaints' jurisdiction. Likewise, the ombudsman is impacted by the organisation which determines the ombudsman's mandate and provides the resources to fulfill that mandate. In a balanced ombudsman system, the resources allocated are sufficient to meet the demands for service, and the ombudsman's mandate clearly determines the scope of issues in the ombudsman's jurisdiction. The balance can be shifted by one of the factors coming unbalanced from the rest; for example, a surge in demand for service without increased resources or consistent demands for service in an area in which the ombudsman does not have jurisdiction.³²⁴

11.4 Providing the Research Results

11.4.1 To ICANN

The ICANN Office of the Ombudsman has been the key entity for this dissertation, and therefore the Ombudsman is well acquainted with the research. ICANN's corporate secretary will receive a copy of the dissertation. ICANN will be in position to use the thesis as a basis to evaluate the Ombudsman's operations and the use of Ombudsman resources to develop the evaluation strategy and produce thesis, and to determine whether the broad evaluation strategy may be applied in other work units.

³²⁴ ICANN Office of the Ombudsman, 2007, **2007 Annual Report**

11.4.2 To the Ombudsman Community

The research from this dissertation has been communicated to the ombudsman community in four distinct manners. First, a draft of the dissertation was circulated to the various ombudsman associations as follows:

- The International Ombudsman Institute – President, Editor;
- The International Ombudsman Association – President, Chair of the Effectiveness Subcommittee;
- The United States Ombudsman Association – President, Director of Outreach and Development;
- Forum of Canadian Ombudsmen – President and Research Committee Chair.

A compilation draft of the dissertation was provided to each recipient during the week of July 30, 2007.

Second, the United States Ombudsman Association and the International Ombudsman Association have requested presentations concerning this research at their respective conferences in 2007 and 2008. Third, excerpts from this dissertation have been accepted for publication in the International Ombudsman Yearbook, Volume 9, published by the International Ombudsman Institute. Fourth, Appendix 11 of this dissertation, *A Practitioner's Guide to Evaluating Ombudsman Offices*, was written as a stand-alone, self-help guide for ombudsmen who wish to use its information to develop their own evaluation frameworks. It is intended to be published as a separate document for that purpose.

11.5 Recommendations for Future Research Questions

The following are questions recommended for future research:

- Why is the American Bar Association involved in the development of standards of practice for ombudsmen?
- Is there an opportunity for the various ombudsman associations to develop a unified approach to standards and evaluation?
- Are these evaluation techniques applicable to multi-purpose ombudsman operations, such as national level ombudsman who also supervise human rights activities?
- Is it possible or worthwhile for ombudsman associations to cooperate with the ISO to develop an ISO standard relative to ombudsmanship?
- What are the opportunities for the various ombudsman associations to develop peer ombudsman opportunities or guidelines?
- Are there risks for the ombudsman community, normally seen as independent, neutral, impartial, and confidential, in developing evaluation frameworks, which may have the latent effect of drawing criticism towards the ombudsman's operations? Does this include political, regulatory, or shareholder risk? Is there a risk in not doing evaluations?
- After allowing several years (3 to 5) for this research to be transmitted to and then implemented by the various ombudsman associations and their members, it would be worthwhile to verify whether this research has been beneficial to the ombudsman community. Likewise, there is a research opportunity to determine whether there has been an increase in the associated literature or change in professional standards as a result of this research.

11.6 Conclusion

The ombudsman represents the best intentions of governments, corporations, and agencies to deal with conflict. The ombudsman institution allows individuals to use an independent and confidential officer to resolve complaints in a non-adversarial environment, without fee. There are several types of ombudsmen, with peculiarities relating to their jurisdiction, mandate, and powers.

Ombudsmen, as members of a field of practice, have demonstrated value in the resolution of individual and systemic complaints; subsequent improvements to government, corporate, or agency operations; and economic savings by mitigating litigation costs. “Likewise, the ombudsman role is notably strengthened by the systemic assessment of its effectiveness and services through a programme of rigorous evaluation.”³²⁵ Using a selection of the tools formulated in this research dissertation, ombudsmen can develop individual evaluation frameworks which will strengthen their capacity to fulfill their roles.

³²⁵ Male, Barbara, 1999, **Assessing Ombudsman Performance: Two Cases Studies in North America**, Doctoral Dissertation, University of Southern California, UMI Dissertation Services, Ann Arbor, MI p348

Appendix 1

Evaluation Process Development –

Report to Audit Committee



ICANN
Office of the Ombudsman
Evaluation Process Development
September 2006
Report to Audit Committee





Why Evaluate?

- ⌘ "Demonstrating Value"
- ⌘ Is it working?
- ⌘ What can be improved?
- ⌘ What are the successes we can celebrate?
- ⌘ Ensuring service standards
- ⌘ Demonstrate integrity

The goals of the evaluation process for the Office of the Ombudsman are varied:

First to demonstrate value, not just in terms of the monetary savings, but also in providing service, and enhancing ICANN's reputational value.

We evaluate to understand if the Office is actually competently delivering on its mandate.

We evaluate to see if there are issues, processes, connections, values, or orientations which could or should be improved.

Through the evaluation process we can underline those successes which both the Office, and ICANN can celebrate.

Evaluation allows us to see whether the Ombudsman is operating a professional program which meets industry standards, and that there is integrity in the manner in which a sole practitioner operates.

Evaluation Principles

- ⌘ Fair, honest, accurate
- ⌘ Established evaluation plan
- ⌘ Understandable and relevant criteria
- ⌘ Use of outside evaluation experts
- ⌘ Evaluation tied to comparative analysis
- ⌘ Multi faceted analysis

The evaluation process has to be related to the operational size, mandate, and maturity of the Office.

A long term evaluation plan was developed early in the Ombudsman's mandate.

The criteria used in the evaluations must be in plain language, relevant to the mandate, transparent, and understandable to the organisation, the Office of the Ombudsman and the community.

As a sole practitioner Office, it will be important to blend evaluation with both self evaluation, and the use of third-party evaluators. Principles of confidentiality must be observed, evaluation cannot over-ride protection of the values and principles of the profession.

Evaluation should not rely on a single, linear approach (i.e. surveys) to looking at criteria, but a multifaceted approach to provide for the best possible observations. This includes comparing the office to similar ombuds operations.

RMAF



- ⌘ Results-based Management Accountability Framework
 - ⌘ Long Term evaluation plan
 - ⌘ At www.icannombudsman.org
 - ⌘ Transparent to community
 - ⌘ Ongoing, formative, and summative timing
 - ⌘ Posted for consultation January 2005
 - ⌘ No commentary

The Results-based Management Accountability Framework was one of the first public documents produced by the Office of the Ombudsman. It puts the operation of the Office of the Ombudsman in context of the overall ICANN operations. The RMAF provides for a 5 year evaluation plan which looks at Ombuds operations on an ongoing basis, 3 years into operation (Formative evaluation) and five years into operation (summative analysis)

Relevance



- Is there an ongoing need for the Office of the Ombudsman?



The RMAF contains an evaluation matrix. The next slides will look at the four broad themes, and the seven evaluation questions. The performance criteria are found in the matrix on the RMAF web page.

This question of relevance is important. It deals, for the most part, with the quantitative volume of work, and analysis of the media reporting, and consumer satisfaction.

Management



- Are the Office of the Ombudsman resources sufficient to carry out its mandate?

With this question one evaluates if the Ombudsman is meeting its obligation to complete planned activities and outputs, and is able to manage the case load and outreach functions.

It also considers the perception in the close ICANN community (board – staff) that the Office has reasonable resources to conduct the work.

Program Delivery



- ⌘ To what extent has the Ombudsman established effective working relationships?
- ⌘ Is ICANN staff and Board dealing with identified issues in a timely manner?
- ⌘ Has there been a change in behaviour on the part of ICANN or a complainant to avoid litigation?

These questions relate to the actual outcomes of the “work”. An Ombudsman must be able to resolve disputes using the power of moral suasion, and effective relationships are a part of this.

The ability of Ombudsman reporting to spur the organisation to create change efficiently is key. If ICANN accepts, but then ignores issues raised by the Ombudsman, the Alternative Dispute Resolution process will be lacking an accountability loop.

The recent client survey indicates that coming to the Office of the Ombudsman resulted in 66% drop in clients contacting a lawyer or starting legal action.

ISO Review



As the Ombudsman is responsible for setting his own budget, and submitting it to the Board for ratification (Bylaw V) the Ombudsman must be cost effective in delivering the program. Steps like bulk buying airline tickets, or combining several travel dictated meetings into one trip are examples of this.

Finally, the Ombudsman should be ever vigilant in the profession for new developments for the delivery of an Ombuds program.

ISO



- ⌘ Contracted with an independent evaluator certified by the International Standards Organisation
- ⌘ February 2005 evaluation to ISO Standard 10002 “Guidelines for Complaints Handling in Organisations”
- ⌘ Office of the Ombudsman met ISO Standards

Ms. Beth Glassman of Los Angeles conducted a review of the establishment of the ICANN Office of the Ombudsman, in comparison to International Standards Organisation criteria. The Office was found to meet those standards.

The use of an independent evaluator, using accepted outside criteria was the first evaluation test done on the Office, and it passed.

Ongoing evaluation....p.2



- ⌘ Actual or potential improvements, efficiencies, or cost savings in ICANN program delivery or administration
- ⌘ Are there other models of Executive Ombudsman which ICANN could employ?



Recent Evaluations

- ⌘ Longitudinal Survey
- ⌘ ICANN and 3 comparators
 - ⌘ ICANN Ombudsman (Executive)
 - ⌘ UN Staff Ombuds (International in Scope)
 - ⌘ Saskatchewan Provincial (Governmental or Classical)
 - ⌘ Ombudsman for Banking and Securities (Executive)



Results



- ICANN Ombudsman operates in an efficient manner based on cost, as well as complaint – staff ratio comparisons

Literature Based Review



- ⌘ Three seminal documents by:
- ⌘ American Bar Association
- ⌘ United States Ombudsman Association
- ⌘ Rick Russell, Practitioner

The Ombudsman undertook a major, and innovative evaluation by finding three pieces of what may be considered to be foundation documents in the profession of Ombudsmanship.

These include:

Standards for the Establishment and Operation of Ombuds Offices, by the American Bar Association (ABA); Essential Characteristics of a Classical Ombudsman, published by the United States Ombudsman Association (USOA); and Creating the Office of the Ombudsman, by Rick Russell, a solicitor, Ombuds, and Alternative Dispute Resolution practitioner.

The evaluation involved extracting criteria or performance indicators from each of these seminal documents, and then comparing these criteria with the operations of the ICANN Ombudsman.



Results

- ⌘ Groundbreaking work in field
- ⌘ Developed 54 criteria
- ⌘ Analyzed ICANN Ombuds against the criteria
- ⌘ Results very positive
 - ⌘ Three actions items resulting:
 - ⌘ Ombuds to consult Audit Committee – Integrity Audit
 - ⌘ Ombuds to consult CFO – Budget tracking updates
 - ⌘ Governance Committee to deal with two issues

It has been expressed by the independent evaluator that this work is groundbreaking in the profession. The review culminated in a list of 54 performance indicators. The criteria were then matched against ICANN Ombuds activities, policies, processes, operations, or structures.

The results were very positive, and the ICANN Ombuds showed excellence in a number of areas:

Despite being in the developmental process, it has matured into a responsive, flexible and fair online dispute resolution system; It has a leading edge evaluation framework in place. Research conducted at ICANN on Ombudsman review is at the forefront in the field. Unlike most Ombudsman organisations, the ICANN Ombudsman will, over time, be able to demonstrate value and program efficiency; It has a strong recognition of the necessity of outreach and community education; It has developed appropriate tools for complaint intake and resolution online; It is unique in its mix of Ombudsmanship and online dispute resolution; It has strong leadership from a well qualified incumbent;

It promotes a strong communications and feedback loop with the organisation; It uses data and trend analysis to promote improvement in the organisation, and to advise other parties of potential issues;

It participates in the range of Ombudsman fora; and, Despite being a sole practitioner office, it has established a continuity program for absences.

Third-party Review (Literature)



- ⌘ Independent reviewer (John Zinsser)
selected by Audit Committee Chair
- ⌘ Presently reviewing Ombuds Report
 - ⌘ Fact checking
 - ⌘ Testing theories
 - ⌘ Credibility testing with profession's standards of practice

In order to provide for a greater degree of integrity in the evaluation, an independent evaluator, Mr. John Zinsser was selected by the Chair of the Audit Committee. Mr. Zinsser was one of a pool of three experts identified by the Ombudsman form within the profession.

Mr. Zinsser is presently in the process of reviewing the Ombudsman's report, and will be issuing his own commentary following his review.



Client Survey

- ⌘ Conducted in July – August 2006
- ⌘ 17 survey questions
- ⌘ 22% response rate (high response rate for online survey)
- ⌘ <http://www.surveymonkey.com/Report.asp?U=240569297233>

The survey invitation was sent to 387 people who had either made a complaint to the Ombudsman, or contacted him seeking assistance. There were 85 responses, or a 22% response rate. There have been almost 2000 contacts to the Office, but invitations were not sent to any of those persons who had participated in bulk email campaigns regarding two top-level domains. In other words, only those who actually sought out the Ombudsman on their own initiative were invited.

A 22% response rate is considered to be very high in online surveying.

The survey consisted of 17 questions, and can be found at the noted link.



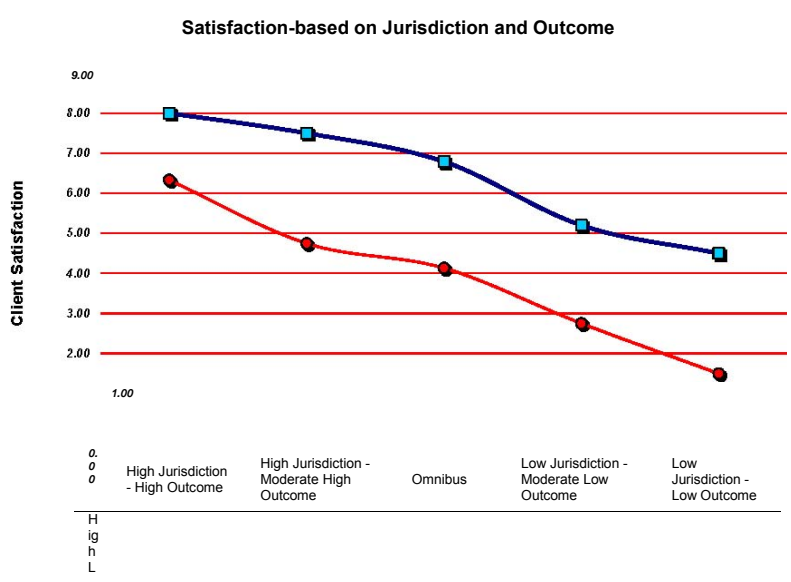
Results

- ⌘ Overall positive results Clients generally satisfied
- ⌘ Groundbreaking analysis on client satisfaction-based on:
 - ⌘ High Jurisdiction – High Outcome vs.
 - ⌘ Low Jurisdiction – Low Outcome

The survey results were very positive, especially when one considers that the Office was in operation for well under two years when the survey was conducted.

The results provided for an interesting analysis which is also groundbreaking . The survey revealed a real and predictable link between client satisfaction, and the ability of the Ombudsman to take jurisdiction of the issue, and then to give an outcome which created remedy.

High jurisdiction – high outcome cases would be those related to an ICANN act, decision or inaction which was “fixed” by coming to the Ombudsman. Low jurisdiction – low outcome issues are things such as registrar business practices which result in the Ombudsman declining jurisdiction.



This graph, which is explained at length in the survey results report, shows the trend line for client satisfaction from high jurisdiction – high outcome on the left hand side, to low jurisdiction – low outcome on the left.

The pattern is distinct.



Future Evaluations

- ⌘ Integrity Audit of Ombudsman complaint files by third-party – independent reviewer in FY 2006-07
- ⌘ Audit Committee is the sponsor
- ⌘ Formative Evaluation Report 2007 – 08
- ⌘ Summative Evaluation Report 2009 -10

In the future, there will be other evaluations conducted. The first planned evaluation is an integrity audit which will consist of a third-party review of Ombudsman case files. The review will fall under the auspices of the Audit Committee, and the Ombudsman will seek active participation.

The evaluator should be selected by the Audit Committee, based on a similar pool of experts in the field as identified by the Ombudsman.

The formative and summative evaluation periods, each with various evaluation projects, as identified in the RMAF, will be considered in coming fiscal years.

Thank you!

Frank Fowlie
fowlie@icann.org



I am more than willing to answer any questions about the evaluation process, either from the Audit Committee as a whole, or from individuals Board members. Thank you for the opportunity to provide you with this update.

Appendix 2

Results-based Management Accountability Framework

Office of the Ombudsman
Internet Corporation for Assigned Names and Numbers
Results-based Management and Accountability Framework (RMAF)

Frank Fowlie

Ombudsman

January 2005

Introduction

This report presents the results-based management and accountability framework (RMAF) for the Office of the Ombudsman (Ombudsman) at the Internet Corporation for Assigned Names and Numbers (ICANN). The framework is organized into four main sections:

- A profile of the office
- A logic model
- An evaluation strategy
- A reporting strategy.

Office of the Ombudsman Profile

- Origin and Rationale

The first ICANN Ombudsman was appointed in November 2004, following amendments to the ICANN bylaws which established the Office. The Ombudsman was established as mechanism to enable members of the ICANN community to bring issues forward in a non-adversarial manner and to seek resolution to problems. The appointment of the Ombudsman was seen as one of the last key factors in ICANN reform.

- Mandate and Objective

The Office of the Ombudsman and the work that the ICANN Ombudsman does are established by [Article V of the ICANN Bylaws](#). (Appendix 1)

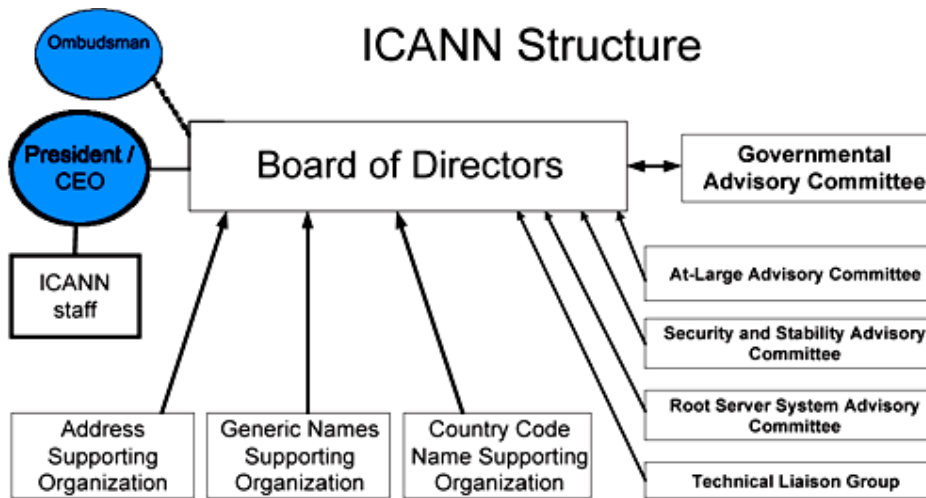
The ICANN Ombudsman is independent, impartial, and neutral. The Ombudsman's function is to act as an Alternative Dispute Resolution (ADR) office for the ICANN community who may wish to lodge a complaint about a staff or board decision, action or inaction. The purpose of the office is to ensure that the members of the ICANN community have been treated fairly. The Ombudsman will act as an impartial officer and will attempt to resolve complaints about unfair treatment by ICANN using ADR techniques.

The objective of the Office is to ensure that the members of the ICANN community receive fair and equitable treatment and administrative fairness throughout ICANN and its various constituent bodies.

- Governance Structure

The Ombudsman is a sole practitioner, independent from both ICANN board and staff structures. The Ombudsman requires this independence in order to conduct his function with the required neutrality and impartiality.

The Ombudsman is hired by the Board of Directors, and can only be removed from office by a vote of more than 75% of the board.



The Ombudsman is a professional in the Ombudsman community and strives for peer recognition in international ombudsman institutions, such as The Ombudsman Association (TOA) and the United States Ombudsman Association (USOA). The Ombudsman will adhere to the standards of practice established by the TOA.

- Clients

Through the Office of the Ombudsman, ICANN has the potential to reach every domain holder across the globe; every registrar; every registry; members of the ICANN community such as GAC, ALAC, etc.; governments; telecommunications companies; and Internet consumers generally.

- Delivery Approach

The Office of the Ombudsman, as a single practitioner office, is linear its delivery. It relies very much on the members of the ICANN community contacting the Ombudsman with issues or complaints, which are then either referred onward or investigated.

Immediate outcome goals surround this functionality. A website has been developed, as has an interactive complaint form, and appropriate complaint handling software is under construction.

Intermediate outcomes will include an outreach program aimed at registries, registrars, and other appropriate venues. The Office of the Ombudsman should be seen as a resource for speaking about Ombuds issues in the cyber community.

- Final Outcomes and Planned Results

Ultimately, ICANN is working towards a stable, secure, and universal Internet. In working towards that goal, the Office of the Ombudsman will assist ICANN by:

- Ensuring that members of the community receive fair and equitable treatment;
- Helping to raise service and administrative standards;
- Improving communication links between ICANN and the community; and,
- Issuing reports, and maintaining a website that informs consumers, and the ICANN community about issues of interest.

Office of the Ombudsman Logic Model

The objective of a logic model is to describe a program in terms of its planned activities, outputs, and desired outcomes. It will demonstrate the causal relationship between the Office of the Ombudsman's activities and the desired final ICANN outcomes. As the Office activities change or evolve, so should the logic model change to reflect the activities, outputs and outcomes.

The key **function** of the Office of the Ombudsman is to act as an independent reviewer of facts to ensure that members of the ICANN community have been fairly treated by the ICANN staff, board and supporting organisations.

The Office of the Ombudsman undertakes a number of **activities** in support of that key function:

- The Ombudsman receives complaints and investigates them or refers them on to another body for action;
- The Ombudsman participates as an active member of the international Ombudsman community, and follows standards of practice established in the field;
- The Ombudsman conducts Outreach activities in order to raise awareness of the role of Office of the Ombudsman, and to conduct proactive Ombudsmanship; and
- The Ombudsman uses appropriate communications tools to reach members of the ICANN community.

The Office of the Ombudsman will have several key **outputs**. The Ombudsman's principal communication vehicle with the ICANN community is the Ombudsman website (<http://www.icann.org/ombudsman>). This website will be interactive, and allow members of the community to send complaints directly to the Ombudsman.

The website will also be the repository of key documents, including two key foundation documents for this office, the Ombudsman Framework, and the Results-based Management and Accountability Framework. The publication of these on the web provides both transparency and accountability.

A third key output will be the Case Management System which will be a critical component in a single practitioner office.

A fourth key output will be the Ombudsman's Annual Report.

There are several **immediate outcomes** from the Ombudsman's activities. Members of the ICANN community now have an advocate for fairness that has been long awaited. The community now has an independent, neutral, and impartial source to

approach to investigate matters of fairness with ICANN. The Office of the Ombudsman can now act as a fair and authoritative voice to assist consumers, and define the limits of where ICANN can and cannot take action.

As an **intermediate outcome**, members of the community, and ICANN itself, will become more accustomed to dealing with the Office of the Ombudsman as an arbiter of fairness; the standards and expectations of fairness, and therefore trust, between ICANN and the community it serves should rise.

As a **final outcome**, the Office of the Ombudsman adds to the overall objectives of ICANN, of a stable, secure and universal Internet, by ensuring that stakeholders have reasonable access to an alternative dispute resolution system.

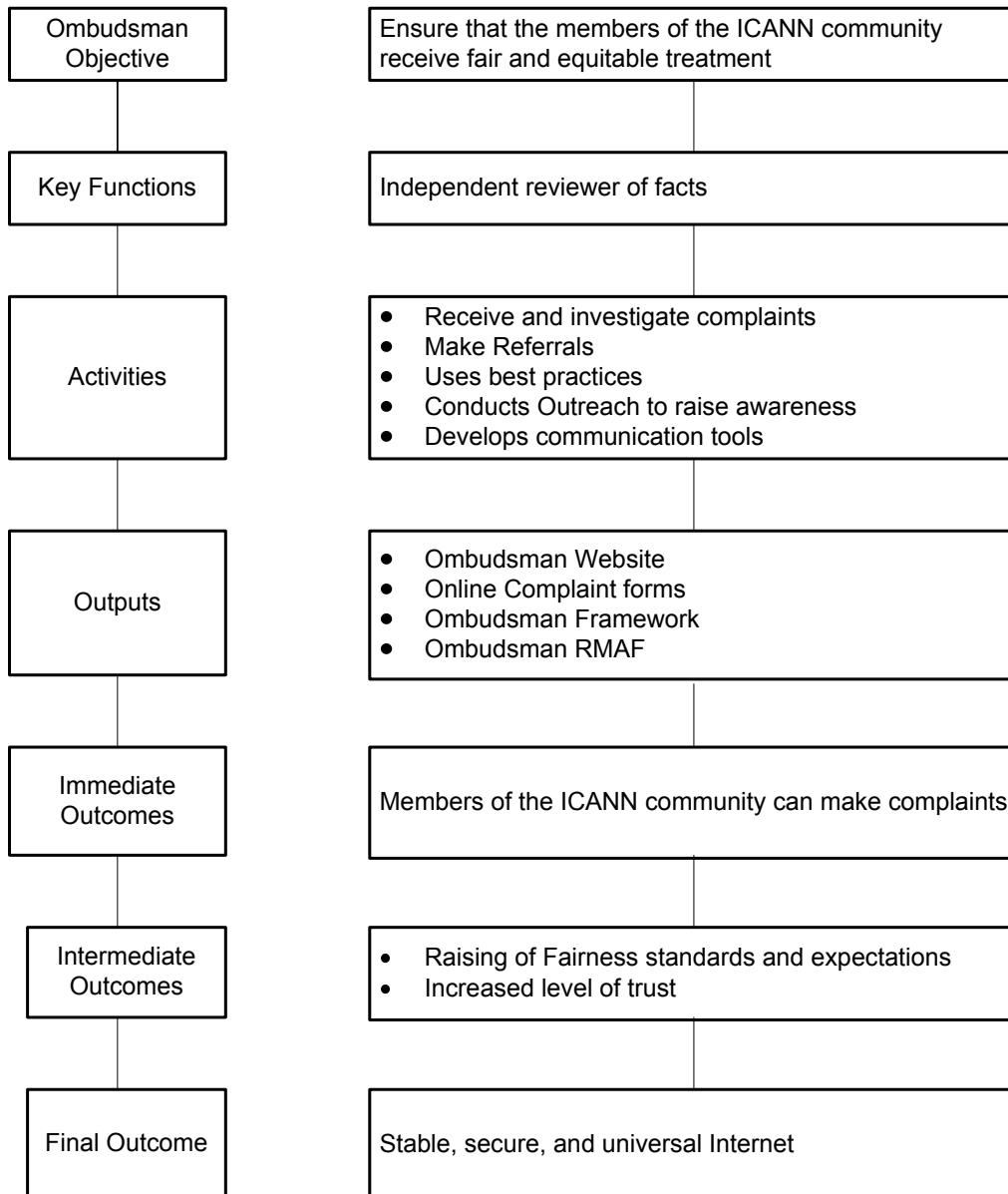
There may be **unintended impacts** as a result of the Office of the Ombudsman coming into existence. Complaints which come to the Office of the Ombudsman and which are resolved, may, in fact, represent the avoidance of costly and time consuming litigation processes. At worst, cases which go through the Ombudsman process, that are not resolved, and are litigated, will have had the benefit of the review of an independent third-party.

The publication of the Office of the Ombudsman Annual Report, and other publications may provide guidance and information to registries and registrars about fairness issues which they can implement, thus raising standards at those levels.



Office of the Ombudsman

Logic Model



Evaluation Strategy

An evaluation strategy identifies a series of questions that can be asked in order to determine if the Office of the Ombudsman has been successful, the types of indicators used to measure success, and data requirements to support the indicators.

The evaluation strategy supports the logic model, and like the latter, is a living document; if the logic model changes, so must the evaluation strategy.

In this case the evaluation strategy is impacted by four factors:

- There are requirements for the establishment of the Office of the Ombudsman, reporting, budgeting, etc, established in Bylaw V (see Appendix 1). Therefore, such questions as to the need for an annual report, or relevance of the office, are restricted by these bylaw requirements.
- The Office of the Ombudsman is, at the present time, a sole practitioner office. The demands upon the Office of the Ombudsman are therefore, in reality, demands on the Ombudsman, and time management and prioritization are key factors. If the volume of work becomes overwhelming the evaluation will quickly indicate problems.
- The Office of the Ombudsman operates under the principle of confidentiality. Out-reporting of issues will be only to required parties or in the generic form.
- The Office of the Ombudsman is an executive Ombudsman, and although independent, is reliant upon ICANN staff for administrative and technical assistance and support. If they are backlogged, this impacts the Ombudsman.

This evaluation strategy includes 7 questions with 15 performance indicators in four topic areas: relevance; management; program delivery; and cost effectiveness. The 15 indicators include both qualitative and quantitative data that can be collected by a number of sources:

- Office of the Ombudsman case Management system;
- Consumer surveys;
- Research;
- Interviews with staff, board members, ICANN community members;
- Financial records; and
- Media records.

The formative or mid term evaluation should take place in fiscal year 2007-08 and the summative or final evaluation two years later in fiscal year 2009-2010.

Because much of the data for evaluation purposes, with the exception of consumer surveys, is already, or will be collected by the Office of the Ombudsman or ICANN, costs associated with an evaluation will be limited. Much of the evaluation can be done in house. Additional costs may be anticipated with consumer surveys and outside interviews, but it is expected that these activities would take place in conjunction with a wider ICANN evaluation.

	Performance Indicators	Data Sources	Who does?	Ongoing	Formative	Summative
Relevance						
Is there an ongoing need for the Office of the Ombudsman?	# of people using Ombudsman services (call centre, website, complaint form etc)	Trend analysis	Ombudsman	x		
	# and type of complaints					
	# and type of resolutions					
	# and type of media mentions that focus on the Office of the Ombudsman	ICANN media files	Communications	x		
% of complainants/community who agree there is a need for the Ombudsman	Consumer surveys	ICANN			x	
% of complainants/community who know of an alternative to resolving a complaint if Ombudsman did not exist	Consumer surveys	ICANN			x	
Management						
Is the Office of the Ombudsman resources sufficient to carry out its mandate?	Activities and outputs completed as planned	Analysis of planned vs. actual activities and outputs	Ombudsman		x	
	Perception that Ombuds has sufficient resources	Interview Board, staff, Ombuds	Ombudsman, ICANN		x	
	Inventory and backlog of Ombuds files	Trend analysis using Case management system	Ombudsman	x	x	x

Program Delivery						
To what extent has the Ombudsman established effective working relationships?	With Staff, Board, Supporting Agencies, Registries, Registrars, and the ICANN community in general	Interviews with stakeholders	Ombudsman, ICANN		x	x
Are ICANN staff and Board dealing with identified issues in a timely manner?	# of cases requiring staff or board intervention	Review Case Management system	Ombudsman		x	x
Has there been a change in behaviour on the part of ICANN or a complainant to avoid litigation?	# of cases resolved by Ombudsman which could have gone to litigation	Review Case Management system	Ombudsman		x	x
Cost effectiveness						
Has the Ombudsman been cost effective in delivering the program?	Savings as a result of bulk airfare purchases, prudent purchasing of equipment, etc	Review of financial data	Chief Financial Officer		X	X
	Actual or potential improvements, efficiencies, or cost savings in ICANN program delivery or administration		Ombudsman	X	x	x
Are there cost effective alternatives?	Are there other models of Executive Ombudsman which ICANN could employ?	Research	Ombudsman	x		

Reporting Strategy

The Ombudsman is required to make an annual report of his activities in accordance with Bylaw V. Ongoing evaluation indicators should be reported to the Board of Directors on an annual basis. Formative and summative evaluations should be reported on in the time frame noted above.

The Office of the Ombudsman will always maintain the responsibility for the evaluations and reporting.

Appendix 1

ARTICLE V: OMBUDSMAN

Section 1. OFFICE OF OMBUDSMAN

1. There shall be an Office of Ombudsman, to be managed by an Ombudsman and to include such staff support as the Board determines is appropriate and feasible. The Ombudsman shall be a full-time position, with salary and benefits appropriate to the function, as determined by the Board.
2. The Ombudsman shall be appointed by the Board for an initial term of two years, subject to renewal by the Board.
3. The Ombudsman shall be subject to dismissal by the Board only upon a three-fourths (3/4) vote of the entire Board.
4. The annual budget for the Office of Ombudsman shall be established by the Board as part of the annual ICANN budget process. The Ombudsman shall submit a proposed budget to the President, and the President shall include that budget submission in its entirety and without change in the general ICANN budget recommended by the ICANN President to the Board. Nothing in this Article shall prevent the President from offering separate views on the substance, size, or other features of the Ombudsman's proposed budget to the Board.

Section 2. CHARTER

The charter of the Ombudsman shall be to act as a neutral dispute resolution practitioner for those matters for which the provisions of the Reconsideration Policy set forth in [Section 2 of Article IV](#) or the Independent Review Policy set forth in [Section 3 of Article IV](#) have not been invoked. The principal function of the Ombudsman shall be to provide an independent internal evaluation of complaints by members of the ICANN community who believe that the ICANN staff, Board or an ICANN constituent body has treated them unfairly. The Ombudsman shall serve as an objective advocate for fairness, and shall seek to evaluate and where possible resolve complaints about unfair or inappropriate treatment by ICANN staff, the Board, or ICANN constituent bodies, clarifying the issues and using conflict resolution tools such as negotiation, facilitation, and "shuttle diplomacy" to achieve these results.

Section 3. OPERATIONS

The Office of Ombudsman shall:

1. facilitate the fair, impartial, and timely resolution of problems and complaints that affected members of the ICANN community (excluding employees and vendors/suppliers of ICANN) may have with specific actions or failures to act by the Board or ICANN staff which have not otherwise become the subject of either the Reconsideration or Independent Review Policies;

2. exercise discretion to accept or decline to act on a complaint or question, including by the development of procedures to dispose of complaints that are insufficiently concrete, substantive, or related to ICANN's interactions with the community so as to be inappropriate subject matters for the Ombudsman to act on. In addition, and without limiting the foregoing, the Ombudsman shall have no authority to act in any way with respect to internal administrative matters, personnel matters, issues relating to membership on the Board, or issues related to vendor/supplier relations;
3. have the right to have access to (but not to publish if otherwise confidential) all necessary information and records from ICANN staff and constituent bodies to enable an informed evaluation of the complaint and to assist in dispute resolution where feasible (subject only to such confidentiality obligations as are imposed by the complainant or any generally applicable confidentiality policies adopted by ICANN);
4. heighten awareness of the Ombudsman program and functions through routine interaction with the ICANN community and online availability;
5. maintain neutrality and independence, and have no bias or personal stake in an outcome; and
6. comply with all ICANN conflicts-of-interest and confidentiality policies.

Section 4. INTERACTION WITH ICANN AND OUTSIDE ENTITIES

1. No ICANN employee, Board member, or other participant in Supporting Organisations or Advisory Committees shall prevent or impede the Ombudsman's contact with the ICANN community (including employees of ICANN). ICANN employees and Board members shall direct members of the ICANN community who voice problems, concerns, or complaints about ICANN to the Ombudsman, who shall advise complainants about the various options available for review of such problems, concerns, or complaints.
2. ICANN staff and other ICANN participants shall observe and respect determinations made by the Office of Ombudsman concerning confidentiality of any complaints received by that Office.
3. Contact with the Ombudsman shall not constitute notice to ICANN of any particular action or cause of action.
4. The Ombudsman shall be specifically authorized to make such reports to the Board as he or she deems appropriate with respect to any particular matter and its resolution or the inability to resolve it. Absent a determination by the Ombudsman, in his or her sole discretion, that it would be inappropriate, such reports shall be posted on the Website.
5. The Ombudsman shall not take any actions not authorized in these Bylaws, and in particular shall not institute, join, or support in any way any legal actions challenging ICANN structure, procedures, processes, or any conduct by the ICANN Board, staff, or constituent bodies.

Section 5. ANNUAL REPORT

The Office of Ombudsman shall publish on an annual basis a consolidated analysis of the year's complaints and resolutions, appropriately dealing with confidentiality obligations and concerns. Such annual report should include a description of any trends or common elements of complaints received during the period in question, as well as recommendations for steps that could be taken to minimize future complaints. The annual report shall be posted on the Website.

Appendix 3

Beth Glassman's ISO Evaluation Letter to the Ombudsman

June 26, 2005

Frank Fowlie, Office of the Ombudsman
The Internet Corporation for Assigned Names and Numbers (ICANN)
4676 Admiralty Way, Suite 330
Marina Del Rey, CA 90292

Subject: Office of the Ombudsman ISO 9001:2000 Compliance Summary

Contract/Agreement Number: 05-14

Dear Mr. Frank Fowlie, Office of the Ombudsman,

Per your request, the following information is a summary evaluation of the Office of the Ombudsman as related to ISO 9001:2000 Provision 4.2.4 Control of Records, 5.2 Customer Focus, 7.2.3 Customer Communications, 8.2.1 Customer Satisfaction, and 8.4 Analysis of Data.

The Office of the Ombudsman meets the intent and general requirements of ISO 9001:2000 Provisions 5.2, 7.2.3, 8.2.1, and 8.4. With respect to Provision 5.2, the establishment of the Office of the Ombudsman by the Board of Directors illustrates top management's commitment to the ICANN community in addressing customer complaints as one mechanism for enhancing customer relationships. In regards to Provision 7.2.3, the Office of the Ombudsman has established, documented, and implemented a customer feedback/compliant process that are communicated via the ICANN website, and outreach and education programs. In relation to Provision 8.2.1 and 8.4, the Office of the Ombudsman is one of the means that ICANN has to monitor and measure customer perception of company's ability to meet customer and service requirements through compliant closing metrics. The metrics data set provides a small sample base due to the infancy of the Office of the Ombudsman; however, there is significant potential over time for issue type identification to lend itself to detection of areas for process improvement.

The Office of the Ombudsman also meets the intent of ISO 9001:2000 Provision 4.2.4 based on Ombudsman record control, identification, confidentiality, maintenance, and storage. However, a deficiency exists in meeting the specified requirement of a documented control of records procedure.

In addition, the compliance evaluation also provided for the following observation. An area of concern, with respect to the Office of the Ombudsman as related to Provision 5.2 and 8.2.1, is ICANN's ability to meet its own requirements as established by the Bylaws for independence, neutrality, and impartiality of the Office of the Ombudsman and customer requirements based on contract renewal terms and no current formal contract authorization. The observation addresses the potential customer perception

of the lack of objectivity of the Office of the Ombudsman due to apprehension of contractor termination or lack of confidence in contractor authority.

To conclude, the Office of the Ombudsman fared well overall as assessed to the applicable ISO 9001:2000 functional and customer-related requirements. Moreover, areas for compliance improvement have been noted above.

If you have any questions regarding the Office of the Ombudsman ISO 9001:2000 compliance summary, feel free to contact me via email: bethglassman@yahoo.com or via phone: 310-892-5299.

Sincerely,

Beth E. Glassman
Consultant

Appendix 4

ICANN Ombudsman Value Statement

The Values of this office are:

Respect for Diversity The Office of the Ombudsman recognises and honours the fact that members of the ICANN community come from across the face of the globe. This diversity means that the Office of the Ombudsman will respect that different cultures view disputes and conflict through different lenses. The Ombudsman will always be open to learning about cultural differences in responding to disputes and conflict.

Excellence in Ombudsmanship The Office of the Ombudsman will strive to be a leader for modeling and promoting fairness, equality, clarity, innovation, and by providing assistance to ICANN and the community in developing an awareness of the Ombudsman role. The Ombudsman will also strive to ensure that ICANN's Office of the Ombudsman is well regarded as an institution of excellence in the peer community, such as The Ombudsman Association, the United States Ombudsman Association, and the Forum of Canadian Ombudsmen. I wish to develop deeper relationships with Ombudsman fora in other regions of the world in the future to reflect the global nature of ICANN's constituency.

Professionalism The Ombudsman, in conducting his or her duties, will maintain and exemplify the highest standards of professional conduct, and respect for human dignity.

Confidentiality All parties, both within the community and ICANN, bringing information to the attention of the Ombudsman should feel assured that the information will be held in confidence, except when it is necessary to help resolve the complaint.

Confidentiality The Ombudsman will, to the greatest extent possible, deal with matters brought to his or her attention, in private. The Office of the Ombudsman respects that people who come to this Office for assistance do so on a confidential basis, and that existence of a complaint, or the identity of a complainant should not become the topic of general conversation, except in those cases where reporting is a necessary step.

Impartiality In each and every situation, the Office of the Ombudsman will receive information from the community with no predisposed idea as to the outcome of the Alternative Dispute Resolution process, and without favouring any party in the process.

Independence The Office of the Ombudsman, in order to remain an impartial officer, will be independent of the normal ICANN structures.

Appendix 5

Third-party Comment on the Literature-based Review



Comment
on the
Internet Corporation for Assigned Names and Numbers
Office of the Ombudsman
Literature Based Evaluation Report

Prepared by
John W. Zinsser
Pacifica Human Communications, LLC.
November, 2006

Executive Summary

The Internet Corporation for Assigned Names and Numbers (ICANN) Office of the Ombudsman (the Office) is executing a significant assessment process. As a first step a Literature Based Evaluation Report (the Report) was completed. This Commentary fact-checks and verifies the claims made in the Report.

In the Report, Frank Fowlie ICANN ombudsman posits that his Office embodies the needed criteria, discoverable in the literature to be properly structured. Upon review this appears to be true, and if intentions are enacted the ICAAN Program will likely be high functioning and valuable. This commentary and the Report though focus on program intention, not performance.

For the Commentary, the selected literature each of the Office's empowering documents and the Report were carefully scrutinized and compared. The Chair of the ICANN Audit Committee was also interviewed, and the ICANN Ombudsman and the Commentary author had ongoing exchanges.

The more than adequate literature review resulted in a list of 54 criteria, (presented in the appendix). Due to some overlap and one "non-criteria," approximately 50 meaningful criteria were extrapolated. The Report clearly conveys how these criteria are "at work" in the Office: Sixty-three percent by direct reference or quotation from empowering documents; and 31 percent through enacted processes or actions. All achievement assertions seem accurate.

Summarizing, the Report engaged sound methods and offered factually accurate findings. Certain considerations likely to result in program enhancement were discovered through this Commentary including: Integration with the ICANN Board; Committee responsiveness to Ombudsman requests; Mindfulness of potential user population and needed resources; and Review of actual performance. Even accepting these considerations the ICANN Office of the Ombudsman is well founded, likely serving well the designated population, and better assessed already than almost all other Ombuds Programs.

Introduction

In order to be both well understood and an optimal performing ombuds program, the Internet Corporation for Assigned Names and Numbers (ICANN) Office of the Ombudsman (the Office) has developed and initiated an exceptionally complete and deliberate assessment process. The “Literature Based Evaluation” (the Report) and this analysis (the Commentary) of that Report are two, new-to-the-field assessment process components. The Report intends to demonstrate that the Office design is well grounded in available theory. The Commentary is to fact-check and verify that claim.

Background and Overview

Ombuds programs are enacted to deal with conflict. While rarely stated as such, these programs are intended to be functional; to achieve some end. For example, certain organisational ombuds programs, assessed by the author, were deployed with the intent to decrease the host organisation’s litigation exposure. Classical ombuds by contrast exist to enhance the ability of citizens to gain the attention of, and appropriate reaction from government systems. A third type, executive ombuds, exist in either the public or private sectors and receive issues from either the public, a regulated community, or members of the host institution with the intent of addressing mis-steps or failures-to-act by that institution.

When one endeavors to determine what any ombuds program, of any type, does or achieves, the absence of established measurement, evaluation, and assessment criteria immediately becomes apparent. Only recently has the subject received meaningful attention. Much more remains necessary. This is the context in which the Office has initiated its assessment process.

In the Report, Frank Fowlie ICANN ombudsman posits that his Office embodies in its structure and intended operation the theoretical criteria present in the limited literature, so as to resemble an ideal program. In my professional opinion the Report obtains this objective, making clear that needed elements are present. Further, if the Office performs to the intent of the design it will in fact be model, and likely be both effective and valuable.

Commentary Purpose

ICANN, through the Ombudsman, requested this Commentary in order to assure the factuality of assertions of the Report. Simply stated, regarding the Literature Based Evaluation this Commentary answers:

- Was the methodology sound?
- Were the findings accurate?
- Do the findings suggest adjustments to the Office for enhancement?

Neither this Commentary nor the Report are about program performance. The focus is intention. This demarcation is critical and the Report crosses it on occasion (Paragraph 2 on each page 42 and 43 offer examples). Neither document quantifies Office activities (measurement). Neither examines Office measures to generate a value proposition (evaluation). Nor do the documents pursue whether ICANN achieves, by creating the Office, any intended outcome (effectiveness). These activities are worth pursuing and on page five the Report states each will be. The Report and this Commentary examine if the intended structure and planned operations reflect the relevant theory and thereby afford the Office the opportunity for measured high performance, significant value creation and achievement of intended effect. Focusing first on intent, structure and theory is exactly the right and recommended departure point.

Selection, Qualification, and Process

Pacifica, selected as result of a competitive bid process involving two other potential providers, was appointed to do third-party reviews of assessments prepared by the ICANN Office of the Ombudsman. Njeri Rionge, Chair of the ICANN Board Audit Committee made the selection based on several elements including written proposal, cost considerations, and overall qualifications.

Having a highly qualified third-party review the assessments provides fact checking and integrity testing of the Ombudsman's data and assertions, without breaching the confidentiality (actual and perceived) and independence of the Office of the Ombudsman. The degree of confidence this process results in exceeds that of only undertaking first party review.

Having conducted the three most complete assessments of large corporate conflict management systems and many additional supporting audits of ombuds programs, Pacifica demonstrated singularly qualifying experience to review the ICANN Ombudsman's assessments. Pacifica principal and co-founder,

John W. Zinsser, having written on the subject for more than a decade

(beginning with his 1995 Masters of Conflict Resolution thesis "Perceived Value of Considered Approaches to Internal Conflict in Business Organisations,") has been both the pioneering force and consistent voice for measurement, evaluation and effectiveness assessment in the conflict management field. He has presented more than 75 times on the subject to associations, clients, and private groups.

He is a driving force in the International Ombudsman Associations Effectiveness Task Force, for whom he is a primary author of the specialized course in Effectiveness. Zinsser is not only a theorist and researcher though; he is also an ombuds practitioner. He was awarded the Office of Personnel Management's President's Award for Outstanding Federal ADR program for, among other reasons, what the judges described as exceptional accountability initiatives for his ombuds program at the Agency for Healthcare Research and Quality. While there is no licensure for conducting such assessments and reviews, Pacifica and Zinsser are imminently and unquestionably qualified and well positioned to conduct these reviews on behalf of ICANN.

This Commentary was developed through close review of The Report, after consideration of all the noted literature (all of which was previously familiar to the author). Each of the Office's empowering documents (Article V of the ICANN Bylaws, the Ombudsman Framework, the Results-based Management and Accountability Framework, etc.) were also scrutinized. Additionally, the Chair of the ICANN Audit Committee was interviewed via telephone to develop information exchange protocols and define desired end-points. Finally, the ICANN Ombudsman and the author conducted an ongoing iterative process via telephone and e-mail exchange.

Challenges

While the Report expands the envelope thus creating new space in the arena of ombuds assessment, it faces two major issues, both external to the program itself.

The first challenge is endemic to the consideration of ombuds programs: the weak lexicon and lack of accepted practices for assessment effect all who examine ombuds. The amorphous nature of ombuds program performance, in general, along with the dearth of rigorous thinking exacerbates the challenge of separating measurement from evaluation from effectiveness. The Report struggles with this issue as well, including in the opening paragraphs of the introduction, where evaluation is expanded to subsume effectiveness.

Constituting the second challenge is the absence of standards of practice for executive ombuds. On page 9, the Report states that the ICANN Office is “an Executive Ombudsman.” However, the opening page of the Ombudsman Framework declares, “The Ombudsman will adhere to the standards of practice adopted by The Ombudsman Association (*sic*).” These standards serve organisational ombudsman, not executive. TOA (now IOA) standards strongly object to certain practices (investigation, decision-making, on-line case related communications,) demanded of the Office by the Bylaws and the Results-based Management Framework. While executive ombuds may be thought of as a hybrid of the classical and organisational models, there is a limit here.

Unfortunately there are NO espoused public standards of practice for executive ombuds. The IOA standards are employed for the Office because they are “as good as it gets.” The confusion created by citing the IOA standard ensnared the author, an experienced practitioner in the field. It could quite possible impact others as well, including users. This lack of clarity may effect user expectations for the Program, and thus performance and assessment.

The Office is not responsible for the absence of executive ombuds standards, nor assessment protocols, but must still manage these challenges.

The Report

Goal & Literature

With the intent of comparing the formative development of the Office with standards and criteria present in the literature, the first step was to search for appropriate sources.

As the Ombudsman writes in the Report (and as suggested in this Introduction) there exists in the public domain “no documentation specific for these purposes.” Accepting this, Fowlie turned to the more generalized literature. The Report names seven different pieces. Expressing a desire to use literature that states criteria in the positive and to focus on design rather than case outcomes, the relevant literature was narrowed to three sources.

In selecting the three works for the Report, the Ombudsman has demonstrated a clear understanding of the hybrid nature of an executive ombuds program. Rick Russel’s Creating the Ombuds Office is largely targeted to organisational ombuds design (the assertion that an ombuds is only as good as its investigations being a notable separation). The United States Ombudsman Association’s primer Essential Characteristics of a Classical Ombudsman, as the title implies is intended for classical programs. The final selected work, The American Bar Association’s Standards for the Establishment and Operation of Ombuds Offices is a broad overview speaking to ALL types of programs.

No other set of three works on ombudsmanship would have covered a broader spectrum, been any more worthy of considering, or offered as complete a list of criteria. This was a more than adequate review of the literature and results in a very significant list of criteria.

Criteria

Drawing on the three sources, the Report presents 54 criteria to compare with the Office’s empowering documents (ICANN Bylaws, Frameworks, etc.) and with the enacted processes (data management, budgeting, hiring etc.). The complete list of criteria is presented in the Appendix.

The Report briefly discusses how certain of these criteria are present in each of the three works and may therefore be considered “universal” criteria (page 10).

More could have been done though to discuss the overlap amongst the criteria. While each is important and specifics do distinguish the criteria, significant overlaps exist. The Report itself in no less than three places, states how one criterion is met by citing the description for other criteria. Page 46 offers the best example of this, where Criterion 52 is considered. At least four sets, encompassing 11 criteria (A. 28, 30, 37; B. 35, 48; C. 40, 47, 53; and D. 43, 46, 52) appear to be so similar as to constitute a single element. This overlap is in part due to the fact that Essential Characteristics of a Classical Ombudsman refines and expands on points directly from Standards for the Establishment and Operation of Ombuds Offices.

Whatever the reason for the overlap, core principles exist (Alignment, Integration, Independence, Confidentiality, Neutrality, Impartiality, Administration, and Oversight) that effectively group the 54 criteria and would have simplified the presentation while adequately expressing the necessities.

However, the rigorousness and detail offered is part of what makes the Report a breakthrough work in the field. The criteria list could, with minor modification, be applied to ANY ombuds program to vet whether it is properly designed, empowered and enacted.

Achievement of Criteria

For each of the 54 criteria, the Report describes how the Office meets the criteria. For most, 34 of 54 or 63 percent, direct reference or quotation from empowering documents are made. For each claim of empowerment by document, the author examined the document in question and agrees it offers the authority reported.

Explanations for 31 percent of the criteria assert enacted processes or actions to claim achievement. For example, a description of the hiring process for the Adjunct Ombuds serves to show how criterion 33 “Independence – Sole authority to hire staff” is met. These were checked via discussion with the Ombudsman or the Chair of the Audit Committee. All assertions made in this manner appear also to be accurate.

One criterion cannot be said to have been achieved either via document or Ombudsman action – 6 “Community Buy-in.” This criterion can only be achieved through appropriate program development involving stakeholders, roll-out, and then performance. According to the Report and the Audit Chair, many stakeholders were involved in the decision to implement the Office. Further, as the Board is largely “stakeholders” some degree of buy-in can be considered as present, since the Board has elected to have the program and continue it.

The only possible mechanism to determine Community Buy-in is surveying. Given the potential user population (every domain name holder or Internet user on the planet) this is an overwhelming and in fact unadvisable task. Narrowing the survey pool to identified constituencies (those with issues in the past, high risk communities, etc.) would simplify the task. Through out-reach initiatives the Office is at once querying Community Buy-in and developing it. Community Buy-in to some degree will be demonstrated by program usage (which while occurring, is beyond the scope of this Commentary).

Similarly, criterion 13 is not demonstrable by enabling document or action. Even so a “qualified and knowledgeable incumbent” does occupy this position. Previous experience as an Ombuds, advanced degree in the field (with pursuit of a terminal degree in process) and a high level of involvement with relevant professional associations serve to convince the author of this.

One criterion simply does not rise to a standard acceptable for consideration. Discussed on page 27, criterion 19 is not particular to ombudsing. “Balanced Time Management,” doubtlessly is something every program should aspire to. However, it is not definitive of ombudsing per se. Other criteria that are undertaken by other non-ombuds functions (17 Filing System, 18 Database) describe specific and necessary nuances (access limited to the ombudsman and confidentiality protections respectively) as to be useful and definitive of ombudsing. Not so 19.

In total, approximately 50 meaningful criteria have been extrapolated from the selected literature. The Report clearly conveys how these criteria are “at work”

within the Office. It is the author's professional opinion that overall and to a more than acceptable degree, the criteria are being achieved as described.

Considerations

The structure of the ICANN Office of the Ombudsman appears sound and thereby suggests performance. Several issues rose to the author's attention though through the preparation of this commentary, any of which potentially could dramatically impact the Program and its performance. Careful consideration and appropriate action in regards to each will likely enhance and preserve the Office.

Integration/Board and Committee Responsiveness

While Criterion 1 makes clear there is significant Alignment between the Office and the organisation's goals, culture and aspirations, significant questions regarding the degree of Program integration (active connection) are raised by the Report. There are descriptions of at least three interfaces between the Ombudsman and either the full Board, or Committees of the Board that have not occurred in accord with policy, or been completed at all.

Specific to this effort, the failure of the Governance Committee to ratify changes to the Ombuds Framework is very disconcerting. The Framework is an empowering document for the Program. Many of the assertions of criteria achievement made in the Report would in fact be null without the Framework is. Also contributing to this concern is the assertion that the Governance Committee has yet to formally ratify the "After One Year Update." Further, that a recommendation from the Ombudsman raised to the Board's attention was not managed within the 60-day window stipulated augments concerns about integration. Quite possibly, any one knowing of these events could question the regard that the Board and Committees have for the Office. As the Office may not make Binding decisions regarding policy etc., and that its singular power is suasion through communication, when protocols of communication and timelines are not upheld, what power the Office has is diminished.

I encourage the Board and the Committees to address these standing issues as soon as possible, and manage interaction with the Office in the future within prescribed time limits.

Size of potential user population/Resources

The breadth of the potential service population (literally the entirety of the on-line community) is staggering. The potential clearly exists for the Office, managed by a sole practitioner (with limited support for travel and leave) to be completely overwhelmed by caseload. In my professional opinion no other ombuds program of any type, has a larger potential user population. The volume of potential users creates a challenge for deploying resources both currently and especially in the future. The Office has conducted worthwhile outreach in a purposeful manner. But reaching the entirety of the population is almost impossible. Appropriate agency strategies (informing others so they may direct users to the program) are in position. These worthwhile efforts could be a double-edged sword if too many new users are “created.”

Hopefully the Office succeeds at aiding the organisation to improve performance and fairness through the Program’s trend recognition, recommendations and other inputs. Even so, caseload data must be carefully monitored for up turn.

Environmental factors possibly leading to increased case loads also warrant watching. It is possible that a policy change, market event, or other input could radically increase usage thus overwhelming the Office.

Confidentiality

No issue more prominently contributes to the identity of an ombuds program, or presents more risk, than confidentiality. Not surprisingly, no issue generates more debate and contention in the field.

Overall, the structure of the Office appears to manage confidentiality well.

There is one phrasing regarding confidentiality that bears examination. Page 45 of the Report declares, “The Bylaws clearly indicate that the Ombudsman shall

determine the confidentiality of complaints.” Earlier on page 34, in a discussion of this core trait we read, “The confidentiality is owned by the complainant.”

While an ombuds can never control the action of a member of the public regarding what information they make public or not, most ombuds assert that confidentiality belongs to the function, not the user. In this manner the ombuds may better maintain control of their most salient characteristic and assert privilege if asked to testify. If a complainant “owns” the privilege, they may “waive” the privilege, insisting the ombuds engage in behavior derogatory to the function, possibly impacting performance. This phrasing needs revision.

Full Performance Consideration

No program is better positioned to demonstrate activity, value and effectiveness than the ICANN Office. For the good of the Program, the organisation and the field, I strongly encourage all involved to continue with the courageous and creative activity to date to measure, evaluate and demonstrate impact.

Appropriate involvement of external parties in this effort is also advisable.

Conclusion

The ICANN Office of the Ombudsman has developed and initiated the single most complete, deliberate, and meaningful assessment process deployed in the ombuds field to date. This process allows the Office to accurately declare it is structured to, and appears to function as, an ideal executive ombuds on behalf of the ICANN community.

Page 49 declares the Report,

...set out with a view to determine three things:

- a) Whether the Office resembles what an ideal Ombudsman institution should look like;
- b) To determine (and identify) if there are gaps in the Ombudsman program, or in the institution relating to the Ombudsman; and

c) To acknowledge if there are standards of practice which enable the Office of the Ombudsman to be considered a centre of excellence in the field.

Each of these three questions may be answered with a strong, "YES."

As to a), the Office was thoughtfully designed and appears to have been deployed and managed with exceptional rigor and professionalism. While demonstrating the criteria needed to resemble an ideal program, perhaps more importantly the Office embodies the needed elements to achieve its intention – expanding fair treatment of those with issues regarding ICANN decisions, actions or inactions. Specific effectiveness measures need to be deployed to ensure this perception is accurate.

While the gaps intoned in b) do indeed exist, none are so dramatic as to lead the author to feel they will significantly damage program performance. As the Office evolves (it is neither mature nor fixed), easy opportunities to close what gaps exist, such as the contradiction of models raised earlier, will present themselves. This is especially true given the number of assessment activities both already executed and planned for the future, as well as the demonstrated commitment to involve external expertise, and communicate assessment findings to ICANN and the public.

However, profoundly more concerning is the degree of integration with, and quality of communication between the Office, the ICANN Board and certain line staff. While better than some other programs, room for improvement exists. Failure by Board Committees to ratify submitted Ombudsman Policies, most notably the Ombudsman Framework, and the full Board to respond within time limits to Office recommendations risk creating the appearance that the Ombudsman is aligned with ICANN but not integrated in such a way as to impact it. While maintaining boundaries, ensuring independence and neutrality the Board, staff, and the Office of the Ombudsman must continue to develop effective and appropriate communications

Especially as concerns both internal and external assessment of the function, the Office of the Ombudsman at ICANN already is a centre, perhaps even THE centre of excellence. Thus the yes to query c) above.

In summation, the Report engaged a reasonable methodology that lead to factual accurate findings that well represented the reality of the Office structure. Certain adjustments likely to result in program enhancement, if enacted, were discovered through this Report and Commentary.

ICANN, the community it regulates, and the ombuds field in its widest definition do benefit from the Office. There is every reason to believe this will continue. Further, it appears likely the benefits to each of these groups will grow.

Author

John W. Zinsser, co-founder of Pacifica Human Communications, LLC., designs and executes mechanisms to determine the value return and effectiveness of conflict management systems, especially ombuds programs. Having conducted the three largest ever external assessments of ombuds programs, and written on the subject for more than a decade (beginning with his 1995 Masters of Conflict Resolution thesis “Perceived Value of Considered Approaches to Internal Conflict in Business Organisations,”) he was also awarded the Office of Personnel Management’s President’s Award for Outstanding Federal ADR program for, among other reasons, what the judges described as exceptional accountability initiatives for his Ombuds Program.

Guidance

The information herein is of a general nature and not intended to address any particular individual or entity’s situation. No one should act upon such information without appropriate professional advice until after a thorough examination of their actual situation. These concepts have not been vetted for accordance with any applicable law. As with any guidance potentially impacting rights, all are encouraged to confer with legal counsel.

While Pacifica Human Communications, LLC., endeavors to provide accurate and timely information, there can be no guarantee that information remains accurate as of the date received or reviewed, and may not continue to be accurate in the future. The estimates and opinions offered here are based on Pacifica’s research, emerging best practices, and information in the public domain.

Appendix

Summary of Evaluation Criteria and Standards

	Ombudsman Criteria	1) Agree Dispute Resolution	2) United States Ombuds. Assoc.	3) American Bar Assn Ombuds Crite
1	Alignment	√		
2	Autonomy - Arm's length - Independence	√	√	√
3	Due process - Natural Justice Principles applied	√		
4	Sufficient Resources	√	√ (32)	
5	Access to Information, documents, staff	√	√ (46)	√
6	Community buy-in	√		
7	Clear mandate	√		√
8	Recourse – Moral Suasion - Public Criticism	√	√ (40)	
9	Accessibility (promotion - availability to the community)	√		
10	Power of Own Motion	√	√ (45)	√
11	Annual Report	√		
12	Established Terms of Reference (TOR)	√		
13	Qualified - Knowledgeable Incumbent	√	√ (36)	
14	Advisory group	√		
15	Active Public Relations Campaign - community education	√		√
16	Structural Autonomy and Accountability	√		
17	Filing system	√		
18	Database	√		
19	Balanced time management	√		
20	Reporting relationship with advisory and budget group	√		
21	Review of start up policy - TOR	√		
22	Independence		√	√
23	Impartiality and Fairness		√	√
24	Credibility of the review process		√	
25	Confidentiality		√	√
26	Independence established by higher jurisdiction		√	

27	Independence - Separate from the organisation it reviews		√	√
28	Independence - Appointed by super majority		√	√
29	Independence - Long fixed term - reappointment possible		√	√
30	Independence – For cause removal by supermajority		√	√
31	Independence - High fixed salary		√	√
32	Independence - Appropriate budget - accountability of spending	√ (4)	√	
33	Independence - Sole authority to hire staff		√	√
34	Independence - Someone can always exercise the Ombudsman role		√	
35	Independence - Decisions not reviewable		√	
36	Impartiality and Fairness - Qualifications	√ (13)	√	
37	Impartiality and Fairness - Supermajority to hire or remove		√	
38	Impartiality and Fairness - No conflict of interest in activities		√	
39	Impartiality and Fairness - Direct access to Ombuds no fee required		√	
40	Impartiality and Fairness - Power of recommendations and public criticism	√ (8)	√	√
41	Impartiality and Fairness - Required to consult on adverse findings		√	√
42	Impartiality and Fairness - Ombuds is an advocate for fairness, not the parties		√	
43	Credible Review - Broad jurisdiction		√	√
44	Credible Review - No parties exempt from complaining		√	
45	Credible Review - Organisation not permitted to impede	√ (5)	√	√
46	Credible Review - Grounds for review are broad, and focus on fairness		√	√
47	Credible Review - Reports problems and recommendations, has ability to publish		√	
48	Credible Review - Findings not reviewable		√	
49	Credible Review - Ombuds cannot make binding orders		√	√
50	Confidentiality - Ombudsman has power to decide level of information to be disclosed		√	√
51	Confidentiality - Ombudsman will resist testifying		√	
52	Broad range of enquiry available			√
53	Discretionary power to refuse complaints and to publicize			√
54	Identify complaint patterns and trends			√
1)	http://www.agreeinc.com/ombudsman.html			
2)	http://www.usombudsman.org/en/references/more_references/essential_characteristics.cfm			
3)	http://www.abanet.org/adminlaw/ombuds/115.pdf			

Appendix 6
Fifty Questions for Self-Evaluation

Fifty Questions for Self Evaluation©

Prepared for the International Ombudsman Association

2007 Annual Conference

St. Louis

Prepared by:

Frank Fowlie©

INTRODUCTION

In this portion of the ongoing Office of the Ombudsman evaluation, I will focus on a review of the literature. The goal of the review will be to determine if there are resources which would enable the Office of the Ombudsman to:

- find evaluation criteria;
- have logical standards in mind during the evaluation;
- And to determine, by preponderance in the literature, which criteria and standards are most likely to be critical in the conduct of Ombudsmanship.

This research provides Ombudsman practitioners with 50 self evaluation questions which may assist in providing an analysis of the Ombudsman program.

These 50 questions are not a cookie cutter for each and every Ombudsman institution. For example, Organisational Ombudsmen might find that questions relating to out reporting may not apply. Ombudsmen may find that due to their particular circumstances that they can be satisfied with responding to less than 50 questions.

This review will be focused on providing an evaluation of the structure and operations of the Office of the Ombudsman, as opposed to an evaluation of the complaints, investigations, and alternative dispute resolution processes used by the Ombudsman in dealing with the community.

A second step in the process will be to have a knowledgeable and qualified analyst¹ conduct a review of the findings of the Office of the Ombudsman in this evaluation, and provide fact checking and commentary. This analytical review may be used to provide the ICANN Board of Directors with an independent voice about Ombudsman functions.

.1 Finding the literature

I have conducted an extensive review of the literature in an attempt to find documents which would provide information on criteria, standards, and emphasis regarding the operation of Ombudsman Offices.

My searching has revealed that there exists no documentation specific for these purposes. In fact, The Human Resource Planning Society has indicated that, “Methods for measuring the effectiveness of the Ombudsman office ... do not exist.”²

There are small a number of documents which have been identified. The three “seminal” works, on which I rely during the course of this evaluation, are:

- Standards for the Establishment and Operation of Ombuds Offices, by the American Bar Association (ABA);
- Essential Characteristics of a Classical Ombudsman, published by the United States Ombudsman Association (USOA); and
- Creating the Office of the Ombudsman, by Rick Russell, a solicitor, Ombuds, and Alternative Dispute Resolution practitioner.

¹ In this case, Mr. John Zinsser

²² Williams, Randy et al., 2003, **Organisational Ombudsman Program: A Governance and Trust Strategy**, The Human Resource Planning Society p8

.2 What does the literature reveal?

There are a number of factors which should be discussed prior to the analysis of the criteria, standards, and emphasis found in the three noted documents. First, the USOA document is an iterative document, taking its genesis from a list developed in the ABA Standards³. Gottehrer et al..⁴, authors of the USOA document, have relied on the initial ABA Standards in their paper, and have defined and expanded upon the characteristics found in the ABA Standards.

These two documents are primarily focused on Classical or Governmental Ombuds schemes. These are typically Ombudsman appointed by a statutory authority such as a legislature, and whose mandates relate to the provision of governmental administration in a particular jurisdiction.

The Russell paper is written from the viewpoint of an “organisational Ombudsman”. The ABA Standards define this type of Ombuds as, “ordinarily addresses problems presented by members, employees, or contractors of an entity concerning its actions or policies.”⁵

While Russell does concentrate on Organisational Ombudsmanship, his paper is extremely helpful as it well defines and illustrates criteria which can also be applicable for an Executive Ombudsman structure. While Russell does not comment

³ American Bar Association, 2004, **Standards for the Establishment and Operation of Ombuds Offices**, <http://www.abanet.org/adminlaw/ombuds/115.pdf> (accessed October 30, 2006) Footnote 12

⁴ Gottehrer was Secretary of the USOA

⁵ American Bar Association, 2004, **Standards for the Establishment and Operation of Ombuds Offices**, <http://www.abanet.org/adminlaw/ombuds/115.pdf> (accessed October 30, 2006) p20

on the principles of confidentiality, and impartiality, he does explore principles of natural justice in some depth.

Alignment

Is the Office of the Ombudsman aligned with the operations, goals, principles of the organisation it serves? i.e. if it is a high tech organisation, do you use leading edge methodologies? Is the composition of the Office of the Ombudsman representative of the potential users? Does the Office of the Ombudsman reflect the goals of the organisation: i.e does your work increase academic achievement; patient care; employee retention etc?

Autonomy - Arm's length - Independent

Is the Office of the Ombudsman situated at "arm's length" from the organisation it serves?

Due process - Natural Justice Principles applied

Does your Office apply the rules of natural justice, and have procedures in place to ensure that you follow the principles of due process?

Sufficient Resources

Are the economic, staffing, support and peer resources given to you enough to allow you to discharge your mandate?

Access to Information, documents, staff

Does your mandate enable to access resources in the organisation?

Community buy-in

Is there evidence that there is "buy-in" for the continuation of your Office?

Clear mandate

Does the charter document, bylaw, statute, or directive establishing your Office make clear what your mandate and functions are?

Recourse - Moral Suasion - Public Criticism

Does your Office have the ability to use the power of moral suasion to resolve issues? Does that include the power of public criticism through annual or special reports?

Accessibility (promotion - availability to the community)

Is your Office available to the community you wish to serve, and do you have appropriate

tools to promote the Office's services to the community?

Power of Own Motion

Do you have the ability to begin an Ombudsman process where you believe that there is an issue of unfairness, and where there may not have been a visitor or complainant?

Annual Report

Are you required to produce an annual report? Does it tell the story of what you really do for a living?

Established Terms of Reference (TOR)

Is there clarity in your contract, bylaws, mandate, institutional policies and procedures to define your terms of reference? Can you identify when you are operating outside of your mandate?

Qualified - Knowledgeable Incumbent

Does the Ombudsman have the knowledge, qualifications, and "street credibility" to get the job done?

Advisory group

Is there a legislative committee, board governance group, stakeholder committee, that acts at an arm's length from the Ombudsman to provide group – not individual- advice on Ombudsman operations?

Active Public Relations Campaign - community education

Does your outreach program meet the needs of your community?

Structural Autonomy and Accountability

Are there clear lines concerning your independent ability to do such things as hiring staff, purchasing needed equipment, selecting training, travel etc?

Filing system

Do you have a separate and secure filing system?

Database

Do you keep appropriate statistical data?

Balanced time management

Does your role have multiple activities: meeting with visitors, investigations, administration, outreach etc?, and is there balance in the time you can devote to each? e.g., does the administrative function of running the office outweigh your ability to do outreach or intakes?

Reporting relationship with advisory and budget group

Is there a linkage between the organisation, especially in terms of budget setting, approval, and updating, and your office?

Review of start up policy – TOR

At some time after start up, have you reviewed your terms of reference to make sure that they are in synch with work you actually do, the work you are seen to do, and the work that the community wants from you? Is there conflict, and is there a need to revise the terms of reference?

Independence

Are you an independent officer of your organisation? How can you demonstrate that? Are you seen to be independent?

Impartiality and fairness

How does your Office define fairness for its operations? Can you apply these principles and be seen to be impartial?

Credibility of the review process

While decisions and recommendations of the Ombudsman are normally not subject to appeal or review, it is a testament to the whole body of the Ombudsman's work if the review process undertaken would have credibility in the eyes of a third-party. Is your review process credible?

Confidentiality

Does your Office make public pronouncements on confidentiality? Are you seen to be a confidential resource? Does your Office or organisation have specified policies on confidentiality?

Independence - established by higher jurisdiction

Is your Office established by a bylaw, policy, or statute through the organisations higher jurisdiction?

Independence - separate from the organisation it reviews

Is your Office seen to be separate and independent?

Independence - appointed by super majority

Is the Ombudsman appointed (or removed) by a super-majority of the organisations board, senate, or legislature?

Independence - long fixed term - reappointment possible

Is your appointment of a fixed term, usually exceeding the length of time that the super-majority is in office?

Independence - for cause removal by supermajority

Does the organisation have the ability to remove the Ombudsman for cause, but only a supermajority vote of the body that appointed the Ombudsman?

Independence - high fixed salary

Is the salary of the Ombudsman at a fixed level, and relevance of a senior member of the organisation?

Independence - appropriate budget - accountability of spending

Is your budget allocation sufficient to meet the requirements of the work? Is the Office of the Ombudsman accountable for its spending? Does the Office receive sufficient reporting from the budget office?

Independence - sole authority to hire staff

Does the Office have the sole authority to select its staff members?

Independence - someone can always exercise the Ombudsman role

If the Ombudsman is unable to act in the role due to vacation, sick leave, etc, is some other person able to receive and act on complaints, or to make recommendations?

Independence - decisions not reviewable

Are decisions or recommendations made by the Ombudsman reviewable by some other entity?

Impartiality and fairness - Qualifications

Is the incumbent qualified for the post of Ombudsman, and do they have requisite knowledge of the particular organisation?

Impartiality and fairness - no conflict of interest in activities

Is the Ombudsman prevented from undertaking any activity which may tend to cause a real or perceived conflict of interest?

Impartiality and Fairness - direct access to Ombuds no fee required

Are members of the community who wish to make complaints required to obtain any permission from another agent, or is any fee be charged to lodge a complaint?

Impartiality and fairness - power of recommendations and public criticism

Does your Office have authority in its terms of reference to make public its recommendations or criticism of the organisation?

Impartiality and fairness - required to consult on adverse findings

If your Office makes findings or recommendations which are critical of individuals or structures, are you required to consult with the affected parties prior to reporting?

Impartiality and fairness Ombuds is an advocate for fairness, not the parties

Is your Office seen to be, or does your Office have policies or make pronouncements, as being an advocate for the fairness of a process, as opposed to an advocate for one of the parties in a dispute?

Credible Review Broad jurisdiction

Is the jurisdiction of your Office defined, and do you act in a manner not to limit the jurisdiction of issues which may be handled by your Office?

Credible review - no parties exempt from complaining

Is your mandate established such that your jurisdiction applies equitably to all parties? Does your Office accept third-party complaints, or complaints from persons not affected by the subject matter of the complaint?

Credible review - organisation not permitted to impede

In conducting Ombudsmanship, does the organisation have the authority, or be seen to have the ability to require the Ombudsman to take direction from the organisation?

Credible review - Ombuds cannot make binding orders

Is the Ombudsman in properly positioned where he may make recommendations, but not binding orders?

Confidentiality - Ombudsman has power to decide level of information to be disclosed

Is the Ombudsman able to determine what information, personal identification etc, is required in handling or a reporting on a complaint?

Confidentiality - Ombudsman will resist testifying

Is the Office either protected by statute from providing evidence in court based on the Ombudsman's work, or if not, is it the Office's public policy to resist testifying?

Broad range of enquiry available

Does the Office have the capacity to determine what form of enquiry it will use, and can it determine if events are related to individual circumstances or are systemic in nature?

Discretionary power to refuse complaints and to publicize

Does the Ombudsman have the ability to refuse to act on issues? May the Ombudsman refuse to publicize or report on issues if he feels there is an underlying reason, such as public interest not to?

Identify complaint patterns and trends

Does your Office look at the database, and does it report on trends found, even if these are not jurisdictional, but may be of interest to the organisation?

Appendix 7

Third-party Comment on the Statistical Comparison



Comment
on the
Internet Corporation for Assigned Names and Numbers
Office of the Ombudsman
Statistical Comparison Report

Prepared by
John W. Zinsser
Pacifica Human Communications, LLC.
February, 2007

Introduction

In order to be both well understood and an optimal performing program, the Internet Corporation for Assigned Names and Numbers (ICANN) Office of the Ombudsman (the Office) has developed and initiated an exceptionally complete and deliberate assessment process. The “Statistical Comparison Report” (the Report) and this analysis (the Commentary) continue the Office’s efforts to be the center of excellence in measuring and assessing Ombudsman operations.

Frank Fowlie ICANN ombudsman, posits in the Report that his Office is efficient, when compared to the Ombudsman for the Province of Saskatchewan, the Ombudsman for Banking Services and Investments (Canada, OBSI), and the United Nations Staff Ombudsman. In my professional opinion the Report fairly achieves this claim, making clear that based on the limited information available regarding total case-load, jurisdictionally appropriate case-load, staffing and over-all budget the ICANN Program is more efficient.

Selection, Qualification, and Process

Pacifica was appointed previously through a competitive bid process to do third-party reviews of assessments prepared by the ICANN Office of the Ombudsman. Njeri Rionge, Chair of the ICANN Board Audit Committee made the selection based on several elements including written proposal, cost considerations, and overall qualifications. Pacifica’s appropriateness to provide this service was previously presented in the Commentary on the Literature Based Evaluation, which is posted at the ICANN Office of the Ombudsman website at <http://www.icann.org/ombudsman/documents/literature-based-evaluation-nov06.pdf>.

This Commentary was developed through close review of The Report, after consideration of the noted sources (all of which are available on-line) and on going discussion with the ICANN ombudsman. This Commentary was also informed by

the author's previous research into the ICANN Office of the Ombudsman, as well as several other assessments he has conducted.

Challenges

As was the case with the Literature Based Evaluation Report, the absence of general literature, publicly available comparable data, and accepted assessment protocols was evident. More specifically, The ICANN Office, as an on-line executive ombudsman is unique. None of the three comparators is either executive in nature or an “on-line” mechanism. Further, accepting that there is no way to compare “apples to apples,” in terms of program type, the data is also significantly inconsistent as neither the OBSI nor the United Nations Staff Ombudsman make budget information publicly available, and the time frames and durations of data vary.

The ICANN Office is not responsible for either the lack of acceptable comparators or data shortcomings, but these challenges must be noted.

The Report

The following table summarizes the essential information from the report.

PROGRAM	ICANN	SASKATCHEWAN	U.N.	OBSI
Staff/FTE	1.08	19	6	17
Budget	\$325,000 [^]	\$1,581,000 [^]	Unknown	Unknown
Intakes/years	1692/1.3	2913/1	1386/3	308/1
Cases*/years	348	639/1	Unknown	Unknown
Jurisdiction [□]	36	639	Unknown	164
Intakes per Staff per Year	1567	153	154	18

** Cases are defined differently by each program, but are generally considered to require some staff time and action, where as intakes and non-cases require significantly less.*

[□] *Jurisdiction means the issue is clearly within the design parameters of the given program and likely directly referred to in empowering documents.*

[^]*All budget figures are in Canadian Dollars.*

Findings

The central finding of the Report, even with the somewhat irregular data, is that the ICANN Ombudsman Office is far more efficient than the comparators. This claim is based not only on number of intakes per staff but may be claimed considering: cases per staff; jurisdictional cases per staff; investigations per staff as well as cost per intake, case, jurisdictional case and investigations.

A secondary finding emphasized in the report addresses the number of intakes and cases versus the number of jurisdictional cases. On page eight, Fowlie writes, "...The ICANN Ombudsman, in relative terms, assists or investigates, and has jurisdiction over issues complained about in stride with a classical Ombudsman's Office." While the rate of cases being investigated or with assistance rendered per intake was indeed comparable – 4.8 for the ICANN Program and 4.5 for Saskatchewan's classical program, The ICANN program experienced 47 intakes for each jurisdictional case while Saskatchewan had only about 19 intakes per jurisdictional case. This means an intake in the Saskatchewan program was more than twice as likely to be jurisdictional. A simple explanation exists for this difference – a single letter writing campaign generated many intakes for the ICANN Program that were NOT jurisdictional. Factoring out these intakes though, the ICANN Program significantly out paces the Saskatchewan Program in ratio of intakes to jurisdictional cases.

These numbers though suggest another and in my professional opinion much more important finding: the success the ICANN Ombudsman Office has achieved in making itself known to potential users. For each of the three comparators the potential user population is extremely well defined (The citizens of the Province of Saskatchewan; A subset of employees at the U.N.; and the federally regulated financial institutions of Canada) and in fact limited by comparison to the potential ICANN Ombudsman Office users. That the ICANN Office is generating numbers in any category comparable to these older, more established and larger programs means the ombudsman is making his program known and accessible. This is a key

determinant not only of program efficiency, but program value and is to be commended.

Considerations

Ensuring Effectiveness, Focusing on Impact

The ICANN Office of the Ombudsman, in addition to executing perhaps the most rigorous assessment process of any ombuds program known, has an additional distinct advantage in determining its impact – a clearly espoused and highly intentional objective. The Results-based Management and Accountability Framework for the Office describe this objective as:

... to ensure that the members of the ICANN community receive fair and equitable treatment and administrative fairness throughout ICANN and its various constituent bodies.

While this Report and its comparisons are worthwhile, future endeavors to understand the contribution of the Office of the Ombudsman to ICANN, should target attainment of this objective. Several activities to examine the degree of achievement are already planned, and these should proceed with all appropriate support from the Office, the organisation, required externals, and the ICANN community as a whole.

Building Meaningful Comparisons

If we accept that benchmarking and looking to other organisations for best practices should also continue, and thus the ICANN Office of the Ombudsman will have to compare itself to other programs in the future, it is important that more similar programs and at the very least more comparable data sets are discovered. Again, while this Report and its comparisons are worthwhile, the total value of the exercise is significantly limited by the different nature of the programs involved and the varied data. The use of publicly available data made this Report quick and easy to execute. Should ICANN desire additional comparisons to other programs in the future, collaborative unifying of data sets across multiple programs, likely executed

by an agent external to all the studied programs, while time consuming, would result in greater validity and benefit for ICANN, the other programs, and the field as a whole.

Conclusion

The ICANN Office of the Ombudsman has developed and initiated the single most complete, deliberate, and meaningful assessment process deployed in the ombuds field to date. This Report, as a component of that assessment process, does allow the Office to declare itself to be “efficient.”

In summation, the Report engaged a reasonable methodology that lead to factually accurate findings that well represent the reality of the ICANN Office of the Ombudsman’s performance as regards intakes, cases, jurisdictional cases, staffing and budgets.

Including these findings with previously established understandings about the Office makes it possible and in fact easy to declare the ICANN Office of the Ombudsman contributes both economic and humanistic value to ICANN, while meeting its core objective” ... to ensure that the members of the ICANN community receive fair and equitable treatment and administrative fairness throughout ICANN and its various constituent bodies.” Future assessment efforts should focus on effectiveness of the Office.

Author

John W. Zinsser, co-founder of Pacifica Human Communications, LLC., designs and executes mechanisms to determine the value return and effectiveness of conflict management systems, especially ombuds programs. Having conducted the three largest ever external assessments of ombuds programs, and written on the subject for more than a decade (beginning with his 1995 Masters of Conflict Resolution thesis “Perceived Value of Considered Approaches to Internal Conflict in Business Organisations,”) he was also awarded the Office of Personnel Management’s President’s Award for Outstanding Federal ADR program for, among other reasons, what the judges described as exceptional accountability initiatives for his Ombuds Program.

Guidance

The information herein is of a general nature and not intended to address any particular individual or entity’s situation. No one should act upon such information without appropriate professional advice until after a thorough examination of their actual situation. These concepts have not been vetted for accordance with any applicable law. As with any guidance potentially impacting rights, all are encouraged to confer with legal counsel.

While Pacifica Human Communications, LLC., endeavors to provide accurate and timely information, there can be no guarantee that information remains accurate as of the date received or reviewed, and may not continue to be accurate in the future. The estimates and opinions offered here are based on Pacifica’s research, emerging best practices, and information in the public domain.

Appendix 8
Client Survey Invitation and Questions

Client Survey Invitation

The ICANN Office of the Ombudsman is collecting survey information to measure its effectiveness. As you have contacted the Ombudsman, I would like to invite you to spend two or three minutes to complete a short survey which will assist the Ombudsman in his evaluation of services.

The survey can be found at:

<http://www.surveymonkey.com/s.asp?u=717062405692>

Thank you for participation.

Best regards,

Appendix Eight

Survey Questions

As seen at: <http://www.surveymonkey.com/s.asp?u=717062405692>

1. How did you hear about the Office of the Ombudsman?

- ICANN Website
- Ombudsman publication or material
- Word of Mouth
- Internet Search
- Other (please specify)

2. Can you tell us about your understanding of the Office of the Ombudsman. When you contacted the Ombudsman, did you know that:

- The Ombudsman investigated complaints about ICANN?
- That his mandate concerns fairness?
- That he has limited powers?
- That he practices Alternative Dispute Resolution to resolve complaints?
- All of the above.
- None of the above

3. How long ago did you access the Ombudsman's services?

- under three months?
- three to six months?
- six to twelve months?
- more than a year ago?

4. What did you contact the Ombudsman about?

- An ICANN act, decision, or inaction
- My Registrar or domain name
- WHOIS
- Uniform Domain Name Dispute Resolution Policy
- Other (please specify)

5. If you used the Office's services, how well did the Ombudsman meet your expectations with regard to the following:

	not at all					expectations met				better than I expected	N/A
Confidentiality	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Timeliness	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Professional manner	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Respect	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Explaining the Ombudsman's jurisdiction	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
in providing an appropriate referral	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
in updating or corresponding with you	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
overall	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

6. If you did not have the option to correspond with the Ombudsman about your issue, where would you have gone to get help?

- Contacted a lawyer
- Initiated Legal Action
- ICANN Staff member
- ICANN Board Member
- Government Official
- Consumer protection agency
- Registrar
- Registry
- Don't know, that's why I contacted the Ombudsman
- Someone else
- Other (please specify)

7. What was the result of your communication with the Ombudsman? The complaint was:

- Referred to someone else
- I received self-help information
- The complaint was investigated
- The Ombudsman took action and the issue was resolved
- The Ombudsman declined to investigate
- I withdrew my complaint
- Other (please specify)

8. If you received a referral or self-help information from the Ombudsman, did it assist you in resolving the matter?

yes somewhat no

Helpfulness

9. After the Ombudsman corresponded with you at the end of his work, what did you do?

- I Took no further action
- I corresponded with the person or agency the Ombudsman referred me to
- I used the self-help information
- I initiated a formal complaint to ICANN through the Board Reconsideration process
- I contacted a lawyer
- I contacted someone else
- I initiated legal action
- Other (please specify)

10. If you contacted the Ombudsman in a language other than English, were you satisfied with the translation service?

yes no N/A

Satisfactory Translation service

11. Can you tell us about your experience with the Ombudsman web page?

	no		somewhat		yes	N/A
Was the site easy to find?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Was the information on the site useful?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Did you learn about the Ombudsman jurisdiction on the web page?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Was the Complaint or Contact Form user friendly?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

12. What part of the web page did you visit?

- About the Ombudsman
- News
- Speeches
- Ombudsman Framework
- Results-based Management Accountability Framework
- Complaint - contact forms
- Links

13. If you have read the Ombudsman's Annual Report, what language did you read it in?

English

French

German

Spanish

14. If you read the Annual Report, did you about learn the role of the Ombudsman?

a little

a lot

Other (please specify)

I learned about the
Ombudsman



15. Would you recommend the Office of the Ombudsman to someone else who had an ICANN related issue to resolve?

Yes

No



16. Where do you live?

Africa

Asia

Australia

Europe






North America

South America

Other (please specify)




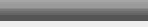


17. Is there anything else you would like to add to assist our evaluation of the Office of the Ombudsman?

Appendix 9 Client Survey Results Survey Responses

1. How did you hear about the Office of the Ombudsman?			
		Response Percent	Response Total
ICANN Website		49.4%	42
Ombudsman publication or material		4.7%	4
Word of Mouth		15.3%	13
Internet Search		21.2%	18
Other (please specify)		17.6%	15
Total Respondents			85
(skipped this question)			0

How did you hear about the Office of the Ombudsman?	
1.	Ombudsman's presentation in one of the ICANN meetings
2.	Internet surfing
3.	when i registered my yahoo email name
4.	Persistence
5.	From others that needed the service
6.	long term ICANN involvement
7.	It's been quite a while since I wrote to him. I'm not sure how I found out.
8.	Website professionals
9.	GoDaddy article that told the truth about your activities and allowing 1 company to have control over the .com and .net TLD's Without competition
10.	I don't recall but possibly via whois or related inquiries as that is how I came to want to file a complaint with your agency.
11.	I've had a domain since 1995, and knew about ICANN from the early days of the net.
12.	Involved in writing the bylaw provision during the evolution and reform process
13.	ICANN's legal department referred.
14.	Article
15.	e-mail from ICANN

2. Can you tell us about your understanding of the Office of the Ombudsman. When you contacted the Ombudsman, did you know that:

		Response Percent	Response Total
The Ombudsman investigated complaints about ICANN?		52.4%	44
That his mandate concerns fairness?		38.1%	32
That he has limited powers?		28.6%	24
That he practices Alternative Dispute Resolution to resolve complaints?		10.7%	9
All of the above.		26.2%	22
None of the above		13.1%	11
		Total Respondents	84
		(skipped this question)	1

3. How long ago did you access the Ombudsman's services?

		Response Percent	Response Total
under three months?		14.1%	12
three to six months?		27.1%	23
six to twelve months?		41.2%	35
more than a year ago?		20%	17
Total Respondents			85
(skipped this question)			0

4. What did you contact the Ombudsman about?

		Response Percent	Response Total
An ICANN act, decision, or inaction		29.4%	25
My Registrar or domain name		42.4%	36
WHOIS		9.4%	8
Uniform Domain Name Dispute Resolution Policy		7.1%	6
Other (please specify)		28.2%	24
Total Respondents			85
(skipped this question)			0

What did you contact the Ombudsman about?

1.	Easyspace refusing to release my domain name.
2.	.ie Domain Registry pricing scheme.
3.	One of the ICANN Mailing lists
4.	two-letter domain issue
5.	intellectual property rights and domain registrations based upon building institutions focused on service to individual customers
6.	ICANN policy (or lack thereof)
7.	IP and non-ICANN issues
8.	Internet Libel
9.	General Information
10.	searching by owner
11.	dot travel domains
12.	someone is parking one of our expired domains
13.	The widespread practice of buying domain names for the sake of reselling them at a profit.
14.	Multiple Issues some resulting in formal complaints other resulting in informal consultation
15.	I first registered www.chotai.com domain name - after about 3 years I want not told that domain was due for renewal and subsequently lost this domain due - very disappointing that I could nothing.
16.	ICANN Registrar Abuse
17.	website dispute
18.	typosquatting
19.	poor communication about decision to domain registrants
20.	registrar deleted my domain and never told me
21.	My email address appearing on ICANN's website and the unexistence of a published privacy policy
22.	Domain registrar software
23.	Abuse of domain registration rebate period to park domains.
24.	immigration problem

5. (Omnibus) If you used the Office's services, how well did the Ombudsman meet your expectations with regard to the following:

	not at all					expectations met				better than I expected	N/A	Response Average
Confidentiality	5% (4)	1% (1)	1% (1)	1% (1)	2% (2)	40% (33)	8% (7)	2% (2)	6% (5)	12% (10)	20% (17)	6.53
Timeliness	8% (7)	2% (2)	4% (3)	7% (6)	2% (2)	31% (26)	6% (5)	5% (4)	10% (8)	20% (17)	5% (4)	6.49
Professional manner	10% (8)	0% (0)	2% (2)	7% (6)	4% (3)	24% (20)	8% (7)	4% (3)	13% (11)	20% (17)	8% (7)	6.69
Respect	7% (6)	1% (1)	5% (4)	5% (4)	1% (1)	25% (21)	8% (7)	6% (5)	12% (10)	20% (17)	8% (7)	6.79
Explaining the Ombudsman's jurisdiction	12% (10)	10% (8)	5% (4)	5% (4)	2% (2)	29% (24)	5% (4)	4% (3)	9% (7)	9% (7)	11% (9)	5.38
in providing an appropriate referral	25% (21)	6% (5)	12% (10)	8% (7)	2% (2)	11% (9)	2% (2)	1% (1)	5% (4)	8% (7)	19% (16)	4.13
in updating or corresponding with you	20% (17)	2% (2)	2% (2)	10% (8)	6% (5)	15% (13)	5% (4)	1% (1)	12% (10)	18% (15)	8% (7)	5.69
overall	23% (19)	6% (5)	8% (7)	2% (2)	10% (8)	12% (10)	5% (4)	4% (3)	4% (3)	23% (19)	5% (4)	5.34
Total Respondents												84
(skipped this question)												1

1. Show respondents who answered question with choice

2. Show respondents who answered question with choice

5A. (High Jurisdiction – High Outcome) If you used the Office’s services, how well did the Ombudsman meet your expectations with regard to the following:

	not at all					expectations met				better than I expected	N/A	Response Average
Confidentiality	0% (0)	0% (0)	0% (0)	0% (0)	0% (0)	33% (1)	33% (1)	0% (0)	33% (1)	0% (0)	0% (0)	7.33
Timeliness	0% (0)	0% (0)	33% (1)	0% (0)	0% (0)	0% (0)	33% (1)	0% (0)	33% (1)	0% (0)	0% (0)	6.33
Professional manner	0% (0)	0% (0)	0% (0)	0% (0)	0% (0)	0% (0)	67% (2)	0% (0)	33% (1)	0% (0)	0% (0)	7.67
Respect	0% (0)	0% (0)	0% (0)	0% (0)	0% (0)	0% (0)	67% (2)	0% (0)	33% (1)	0% (0)	0% (0)	7.67
Explaining the Ombudsman’s jurisdiction	0% (0)	0% (0)	0% (0)	0% (0)	0% (0)	0% (0)	33% (1)	33% (1)	33% (1)	0% (0)	0% (0)	8.00
in providing an appropriate referral	0% (0)	0% (0)	0% (0)	0% (0)	0% (0)	0% (0)	67% (2)	0% (0)	33% (1)	0% (0)	0% (0)	7.67
in updating or corresponding with you	0% (0)	0% (0)	0% (0)	0% (0)	0% (0)	0% (0)	33% (1)	0% (0)	67% (2)	0% (0)	0% (0)	8.33
overall	0% (0)	0% (0)	0% (0)	0% (0)	0% (0)	0% (0)	67% (2)	0% (0)	0% (0)	33% (1)	0% (0)	8.00
Total Respondents												3
(filtered out)												81
(skipped this question)												1

1. Show respondents who answered question with choice

2. Show respondents who answered question with choice

5B. (High Jurisdiction – Moderate High Outcome) If you used the Office’s services, how well did the Ombudsman meet your expectations with regard to the following:

	not at all					expectations met				better than I expected	N/A	Response Average
Confidentiality	0% (0)	0% (0)	0% (0)	0% (0)	0% (0)	50% (2)	0% (0)	0% (0)	50% (2)	0% (0)	0% (0)	7.50
Timeliness	25% (1)	0% (0)	0% (0)	0% (0)	0% (0)	25% (1)	25% (1)	0% (0)	25% (1)	0% (0)	0% (0)	5.75
Professional manner	25% (1)	0% (0)	0% (0)	0% (0)	0% (0)	25% (1)	25% (1)	0% (0)	25% (1)	0% (0)	0% (0)	5.75
Respect	0% (0)	25% (1)	0% (0)	0% (0)	0% (0)	25% (1)	25% (1)	0% (0)	25% (1)	0% (0)	0% (0)	6.00
Explaining the Ombudsman’s jurisdiction	33% (1)	0% (0)	0% (0)	0% (0)	0% (0)	0% (0)	0% (0)	33% (1)	33% (1)	0% (0)	0% (0)	6.00
in providing an appropriate referral	25% (1)	25% (1)	0% (0)	0% (0)	0% (0)	0% (0)	25% (1)	0% (0)	25% (1)	0% (0)	0% (0)	4.75
in updating or corresponding with you	25% (1)	0% (0)	0% (0)	0% (0)	25% (1)	0% (0)	0% (0)	0% (0)	50% (2)	0% (0)	0% (0)	6.00
overall	25% (1)	25% (1)	0% (0)	0% (0)	0% (0)	0% (0)	25% (1)	0% (0)	0% (0)	25% (1)	0% (0)	5.00
Total Respondents												4
(filtered out)												80

1. Show respondents who answered question with choice

2. Show respondents who answered question with choice

5C. (Low Jurisdiction – Moderate Low Outcome) If you used the Office’s services, how well did the Ombudsman meet your expectations with regard to the following:

	not at all					expectations met				better than I expected	N/A	Response Average
Confidentiality	20% (1)	0% (0)	0% (0)	0% (0)	20% (1)	60% (3)	0% (0)	0% (0)	0% (0)	0% (0)	0% (0)	4.80
Timeliness	20% (1)	0% (0)	0% (0)	40% (2)	0% (0)	20% (1)	0% (0)	0% (0)	0% (0)	20% (1)	0% (0)	5.00
Professional manner	20% (1)	0% (0)	0% (0)	20% (1)	0% (0)	20% (1)	20% (1)	20% (1)	0% (0)	0% (0)	0% (0)	5.20
Respect	20% (1)	0% (0)	20% (1)	0% (0)	0% (0)	20% (1)	20% (1)	20% (1)	0% (0)	0% (0)	0% (0)	5.00
Explaining the Ombudsman’s jurisdiction	20% (1)	20% (1)	20% (1)	20% (1)	0% (0)	20% (1)	0% (0)	0% (0)	0% (0)	0% (0)	0% (0)	3.20
in providing an appropriate referral	40% (2)	0% (0)	20% (1)	20% (1)	0% (0)	0% (0)	0% (0)	20% (1)	0% (0)	0% (0)	0% (0)	3.40
in updating or corresponding with you	40% (2)	0% (0)	20% (1)	0% (0)	0% (0)	20% (1)	0% (0)	0% (0)	0% (0)	0% (0)	20% (1)	2.75
overall	40% (2)	0% (0)	20% (1)	0% (0)	40% (2)	0% (0)	0% (0)	0% (0)	0% (0)	0% (0)	0% (0)	3.00
Total Respondents												5
(filtered out)												79
(skipped this question)												1

1. Show respondents who answered question

with choice

2. Show respondents who answered question

with choice

5D. (Low Jurisdiction - Low Outcome) If you used the Office's services, how well did the Ombudsman meet your expectations with regard to the following:

	not at all					expectations met				better than I expected	N/A	Response Average
Confidentiality	17% (1)	0% (0)	0% (0)	17% (1)	17% (1)	33% (2)	0% (0)	0% (0)	0% (0)	0% (0)	17% (1)	4.40
Timeliness	17% (1)	0% (0)	0% (0)	33% (2)	0% (0)	50% (3)	0% (0)	0% (0)	0% (0)	0% (0)	0% (0)	4.50
Professional manner	17% (1)	0% (0)	0% (0)	33% (2)	17% (1)	33% (2)	0% (0)	0% (0)	0% (0)	0% (0)	0% (0)	4.33
Respect	17% (1)	0% (0)	17% (1)	17% (1)	17% (1)	33% (2)	0% (0)	0% (0)	0% (0)	0% (0)	0% (0)	4.17
Explaining the Ombudsman's jurisdiction	17% (1)	50% (3)	17% (1)	0% (0)	0% (0)	17% (1)	0% (0)	0% (0)	0% (0)	0% (0)	0% (0)	2.67
in providing an appropriate referral	67% (4)	17% (1)	17% (1)	0% (0)	0% (0)	0% (0)	0% (0)	0% (0)	0% (0)	0% (0)	0% (0)	1.50
in updating or corresponding with you	67% (4)	17% (1)	0% (0)	0% (0)	0% (0)	17% (1)	0% (0)	0% (0)	0% (0)	0% (0)	0% (0)	2.00
overall	33% (2)	33% (2)	33% (2)	0% (0)	0% (0)	0% (0)	0% (0)	0% (0)	0% (0)	0% (0)	0% (0)	2.00
Total Respondents												6
(filtered out)												78
(skipped this question)												1







6. If you did not have the option to correspond with the Ombudsman about your issue, where would you have gone to get help?

		Response Percent	Response Total
Contacted a lawyer		14.6%	12
Initiated Legal Action		12.2%	10
ICANN Staff member		12.2%	10
ICANN Board Member		7.3%	6
Government Official		12.2%	10
Consumer protection agency		20.7%	17
Registrar		12.2%	10
Registry		2.4%	2
Don't know, that's why I contacted the Ombudsman		50%	41
Someone else		2.4%	2
Other (please specify)		14.6%	12
Total Respondents			82
(skipped this question)			3











If you did not have the option to correspond with the Ombudsman about your issue, where would you have gone to get help?

<u>1.</u>	ICANN
<u>2.</u>	Combination
<u>3.</u>	No where as I had an eccelent service
<u>4.</u>	Local Authority
<u>5.</u>	Seek more government oversight
<u>6.</u>	still feel you could have helped me more!
<u>7.</u>	Depends upon the different circumstances involving each contact
<u>8.</u>	There would have been no alternative
<u>9.</u>	Used my website to expose corruption in the Ombudsman's office
<u>10.</u>	State & Federal Law Enforcement
<u>11.</u>	No one else as no one else are concerned about spam
<u>12.</u>	ICANN reconsideration or independent review procedure




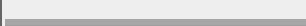
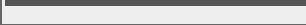


Show respondents who answered question What did you contact the Ombudsman about?
 with choice An ICANN act, decision, or inaction

6. (High Jurisdiction) If you did not have the option to correspond with the Ombudsman about your issue, where would you have gone to get help?			
		Response Percent	Response Total
Contacted a lawyer		4.2%	1
Initiated Legal Action		0%	0
ICANN Staff member		0%	0
ICANN Board Member		20.8%	5
Government Official		25%	6
Consumer protection agency		29.2%	7
Registrar		4.2%	1
Registry		0%	0
Don't know, that's why I contacted the Ombudsman		37.5%	9
Someone else		0%	0
Other (please specify)		25%	6
		Total Respondents	24
		(filtered out)	58
		(skipped this question)	3

Show respondents who answered question with choice

6. (Low Jurisdiction) If you did not have the option to correspond with the Ombudsman about your issue, where would you have gone to get help?			
		Response Percent	Response Total
Contacted a lawyer		22.9%	8
Initiated Legal Action		20%	7
ICANN Staff member		11.4%	4
ICANN Board Member		5.7%	2
Government Official		11.4%	4
Consumer protection agency		25.7%	9
Registrar		17.1%	6
Registry		2.9%	1
Don't know, that's why I contacted the Ombudsman		57.1%	20
Someone else		0%	0
Other (please specify) <input type="button" value="View"/>		17.1%	6
Total Respondents			35
(filtered out)			47
(skipped this question)			3

7. What was the result of your communication with the Ombudsman? The complaint was:







		Response Percent	Response Total
Referred to someone else		15.5%	13
I received self-help information		11.9%	10
The complaint was investigated		13.1%	11
The Ombudsman took action and the issue was resolved		20.2%	17
The Ombudsman declined to investigate		20.2%	17
I withdrew my complaint		4.8%	4
Other (please specify)		39.3%	33
		Total Respondents	84
		(skipped this question)	1

What was the result of your communication with the Ombudsman? The complaint was:	
<u>1.</u>	No action. They suggested I talk to the Registrar who in fact was the culprit.
<u>2.</u>	My issue was resolved, but I don't know whether it was a consequence of the Ombudsman's action.
<u>3.</u>	i complained that ICANN's board did not publish all minutes - eventually they approached that goal - months passed between my complaint to the ombudsman - i have no idea if he had an impact on the pub
<u>4.</u>	never heard from a sole!!!
<u>5.</u>	Not resolved.
<u>6.</u>	Unknown
<u>7.</u>	The ombudsman declined to do anything
<u>8.</u>	The fellow who answered went out of his way to suggest ways around problems not just ICANN related even though he did not have to. He helped more than anyone I contacted. We have since had other ...
<u>9.</u>	He confirmed that Easyspace had lied to me
<u>10.</u>	Staff overruled the ombudsman
<u>11.</u>	He explained the situation and there was nothing to do.
<u>12.</u>	Don't know. I believe I received receipt of my petition and that was it.
<u>13.</u>	Nothing
<u>14.</u>	threw my hands up in the air in resignation and wondered what exactly the ombudsman really can do for anyone
<u>15.</u>	Registrar released the domain to my transfer registrar only after lengthy interaction. I was very close to losing control over the domain.
<u>16.</u>	I followed up the ombudsman's reference to the Arbitration Court in Prague, but found that the fee was only marginally higher than the price asked for my domain name by the cyber squatter
<u>17.</u>	He said the practice was not necessarily a problem (he's wrong) and did nothing.
<u>18.</u>	'Swept underneath the carpet'
<u>19.</u>	too expensive
<u>20.</u>	inaction
<u>21.</u>	ICANN Registrar is parking & ransoming domains. Ombudsman claimed read docs, declined to investigate because "domain disputes are settled elsewhere" even though that was NEVER THE COMPLAINT SUBMITTED"

<u>22.</u>	The Ombudsman mo took action and the issue not was resolved
<u>23.</u>	no assistance, no referral
<u>24.</u>	i was asked to fill out a formal complaint
<u>25.</u>	the declined to become involved
<u>26.</u>	icann is powerless to help me
<u>27.</u>	The Ombudsman eventually declined jurisdiction
<u>28.</u>	Ombudsman's help was incomplete
<u>29.</u>	I don't remember
<u>30.</u>	Failed to give me information on Registrars
<u>31.</u>	Don't know, never got a response
<u>32.</u>	I have no idea what happened to my complaint.
<u>33.</u>	Once the registrar knew that ICANN was involved, the issue magically went away.






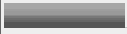

1. Show respondents who answered question What did you contact the Ombudsman about?
 with choice Other (please specify)

7. What was the result of your communication with the Ombudsman? The complaint was:

		Response Percent	Response Total
Referred to someone else		8%	2
I received self-help information		8%	2
The complaint was investigated		16%	4
The Ombudsman took action and the issue was resolved		12%	3
The Ombudsman declined to investigate		36%	9
I withdrew my complaint		0%	0
Other (please specify)		44%	11
		Total Respondents	25
		(filtered out)	59
		(skipped this question)	1

What was the result of your communication with the Ombudsman? The complaint was:	
1.	i complained that ICANN's board did not publish all minutes - eventually they approached that goal - months passed between my complaint to the ombudsman - i have no idea if he had an impact on the pub
2.	Unknown
3.	The ombudsman declined to do anything
4.	Staff overruled the ombudsman
5.	Don't know. I believe I received receipt of my petition and that was it.
6.	Nothing
7.	inaction
8.	ICANN Registrar is parking & ransoming domains. Ombudsman claimed read docs, declined to investigate because "domain disputes are settled elsewhere" even though that was NEVER THE COMPLAINT SUBMITTED"
9.	i was asked to fill out a formal complaint
10.	The Ombudsman eventually declined jurisdiction
11.	Ombudsman's help was incomplete

1. Show respondents who answered question What did you contact the Ombudsman about?
 with choice My Registrar or domain name

7. What was the result of your communication with the Ombudsman? The complaint was:		Response Percent	Response Total
Referred to someone else		16.7%	6
I received self-help information		13.9%	5
The complaint was investigated		11.1%	4
The Ombudsman took action and the issue was resolved		30.6%	11
The Ombudsman declined to investigate		16.7%	6
I withdrew my complaint		8.3%	3
Other (please specify)		33.3%	12
Total Respondents			36
(filtered out)			48
(skipped this question)			1

What was the result of your communication with the Ombudsman? The complaint was:	
1.	No action. They suggested I talk to the Registrar who in fact was the culprit.
2.	never heard from a sole!!!
3.	Unknown
4.	He confirmed that Easyspace had lied to me
5.	threw my hands up in the air in resignation and wondered what exactly the ombudsman really can do for anyone
6.	Registrar released the domain to my transfer registrar only after lengthy interaction. I was very close to losing control over the domain.
7.	I followed up the ombudsman's reference to the Arbitration Court in Prague, but found that the fee was only marginally higher than the price asked for my domain name by the cyber squatter
8.	'Swept underneath the carpet"
9.	The Ombudsman mo took action and the issue not was resolved
10.	the declined to become involved
11.	Don't know, never got a response
12.	Once the registrar knew that ICANN was involved, the issue magically went away.

8. If you received a referral or self-help information from the Ombudsman, did it assist you in resolving the matter?

	yes	somewhat	no	Response Average
Helpfulness	23% (13)	14% (8)	63% (36)	2.40
Total Respondents				57
(skipped this question)				28

1. Show respondents who answered question with choice

8. If you received a referral or self-help information from the Ombudsman, did it assist you in resolving the matter?

	yes	somewhat	no	Response Average
Helpfulness	24% (5)	10% (2)	67% (14)	2.43
Total Respondents				21
(filtered out)				36
(skipped this question)				28









1. Show respondents who answered question

with choice

8. If you received a referral or self-help information from the Ombudsman, did it assist you in resolving the matter?

	yes	somewhat	no	Response Average
Helpfulness	40% (2)	20% (1)	40% (2)	2.00
Total Respondents				5
(filtered out)				52
(skipped this question)				28

9. After the Ombudsman corresponded with you at the end of his work, what did you do?

		Response Percent	Response Total
I Took no further action		39%	32
I corresponded with the person or agency the Ombudsman referred me to		22%	18
I used the self-help information		8.5%	7
I initiated a formal complaint to ICANN through the Board Reconsideration process		3.7%	3
I contacted a lawyer		4.9%	4
I contacted someone else		3.7%	3
I initiated legal action		3.7%	3
Other (please specify)		28%	23
		Total Respondents	82
		(skipped this question)	3

After the Ombudsman corresponded with you at the end of his work, what did you do?	
<u>1.</u>	I did not have an alternative. I could get a Domain resolution forum but they charge a hefty fee.
<u>2.</u>	i believe he contacted me once - i do not recall that the communication was fruitful
<u>3.</u>	Issue resolved by other means
<u>4.</u>	Board took action and redesigned their process.
<u>5.</u>	n/a
<u>6.</u>	Contacted the CEO
<u>7.</u>	used his info, but since have IP questions, reported to cybercrime feedback of feds
<u>8.</u>	No contact. ombudsman a fraud situation as is custom pro design is and was. ombudsman just a useless liberal powerless entity. Toothless tiger. paid through the very fraud operation
<u>9.</u>	see answer to #7 above
<u>10.</u>	None. I became a pain in the side of the registrar who held my domain hostage.
<u>11.</u>	I dropped my attempt to rescue my failed registration. The price demanded was too high, and the chances of winning at arbitration were only 50:50.
<u>12.</u>	Feel utter disgust and contempt for him
<u>13.</u>	could really do nothing
<u>14.</u>	gave up. what a waste of effort
<u>15.</u>	Currently Contacting CA & LA State Attorney Generals & FBI Antitrust office about Registrar's criminal activity, & ICANN's Legal Department & Ombudsman's complicity.
<u>16.</u>	I caontact The Ombudsman again as there was a misunderstand from The Ombudsman of what my complaint to them was about
<u>17.</u>	Didn't do anything
<u>18.</u>	Contacted Consumer Protection Agency
<u>19.</u>	conducted own research
<u>20.</u>	filed it to take action when I could get to it
<u>21.</u>	Requested independent review of the ICANN decision
<u>22.</u>	n/a
<u>23.</u>	waiting for response from referral

10. If you contacted the Ombudsman in a language other than English, were you satisfied with the translation service?				
	yes	no	N/A	Response Average
Satisfactory Translation service	3% (2)	6% (4)	91% (58)	1.67
Total Respondents				64
(skipped this question)				21

11. Can you tell us about your experience with the Ombudsman web page?							
	no		somewhat		yes	N/A	Response Average
Was the site easy to find?	14% (11)	6% (5)	29% (23)	10% (8)	33% (26)	8% (6)	3.45
Was the information on the site useful?	10% (8)	13% (10)	32% (25)	10% (8)	26% (20)	9% (7)	3.31
Did you learn about the Ombudsman jurisdiction on the web page?	15% (12)	10% (8)	28% (22)	9% (7)	24% (19)	13% (10)	3.19
Was the Complaint or Contact Form user friendly?	9% (7)	5% (4)	28% (22)	17% (13)	23% (18)	18% (14)	3.48
Total Respondents							80
(skipped this question)							5



12. What part of the webpage did you visit?

		Response Percent	Response Total
About the Ombudsman		70%	49
News		10%	7
Speeches		4.3%	3
Ombudsman Framework		15.7%	11
Results Based Management Accountability Framework		2.9%	2
Complaint - contact forms		77.1%	54
Links		10%	7
Total Respondents			70








13. If you have read the Ombudsman's Annual Report, what language did you read it in?

		Response Percent	Response Total
English		94.9%	37
French		0%	0
German		2.6%	1
Spanish		2.6%	1
Total Respondents			39
(skipped this question)			46

14. If you read the Annual Report, did you about learn the role of the Ombudsman?							
	a little				a lot	Other (please specify)	Response Average
I learned about the Ombudsman	26% (9)	18% (6)	24% (8)	15% (5)	9% (3)	9% (3)	2.58
Total Respondents							34
(skipped this question)							51

15. Would you recommend the Office of the Ombudsman to someone else who had an ICANN related issue to resolve?			
		Response Percent	Response Total
Yes		59%	49
No		41%	34
Total Respondents			83
(skipped this question)			2

16. Where do you live?

		Response Percent	Response Total
Africa		2.4%	2
Asia		3.6%	3
Australia		3.6%	3
Europe		19%	16
North America		63.1%	53
South America		1.2%	1
Other (please specify)		8.3%	7
		Total Respondents	84
		(skipped this question)	1

Where do you live?

<u>1.</u>	UK
<u>2.</u>	usa
<u>3.</u>	England
<u>4.</u>	MALTA
<u>5.</u>	USA
<u>6.</u>	Central America
<u>7.</u>	caribbean

17. Is there anything else you would like to add to assist our evaluation of the Office of the Ombudsman?

1. My issue was apparently out of the Ombudsmann jurisdiction but they agreed to help and send an email for me as easyspace had acted unprofessionally. I was incredibly relived as I had been treated unfairly and it was nice to know someone could help. I do not think there presence is known at all though and I only found out about them from Easyspace making a mistake. Awareness of ICANN needs to be made.
2. There must be some legislation that reserves the rights of domain owners/web managers that makes it easier to renew one's domain. Something must be done about people that predatorially cull domain names (having no valid use for them) only to sell them back to owners/or new people for profit. It is quite discouraging in this day and age of governmental oversight that ICANN claims no authority over this unethical practice.
3. You must find a resolution to the problem of bad Registrars who try to hold on to domains so that they don't loose clients. Who checks the ACCOUNTABILITY of these Registrar's. Is there anybody is not your office.
4. perhaps my unsatisfactory experience was at least partly the result of the fact that the ombudsman was new to the job, if i remember correctly.
5. The Ombudsman responded promptly and with helpful information. Unfortunately, the Register Liason Manager was not as responsive, and took no action regarding my complaint.
6. This office is a valuable contribution to ICANN.
7. complete waste of time
8. I think the fact that the Ombudsman just looked into the matter helped in resolving the issue.
9. The system is broken. I found a two-number .org domain that is not in use and that cannot be used to represent a country but no one will let me register it.
10. Comment: If you are not associated with an independent counsel investigation, then the evaluation of the ombudsman seems to be a waste of time, since it appears that the position has little or no power to do anything regarding the pursuit of justice.
11. Thank you for this opportunity to provide feedback on the office of ombudsman. I hope someone other than the ombudsman reads it. Simply put, I was very disappointed. The five items below summarize my decision to make a submission to the ombudsmans office, and my request. 1. Something bad happened to me pertaining to a domain registration. 2. I realized that addressing my particular problem outside of the purview of ICANN would, at best, only solve MY problem and would do nothing for anyone else who has suffered (or will) the same misfortune. At worst, it would be an exercise in frustration coincident with investments of time, money and stress, with no guarantee of success. 3. I concluded that it happened as a result of ICANN policies, and that changing those policies is by far the most effective way to ensure that the unfortunate incident would not occur again to me or anyone else in the future. (Irrespective of how my particular incident was resolved, I considered this the grown-up, proactive, forward-looking approach.) 4. I operate on the assumption that ICANN sets ICANN policies, and from that conclude that ICANN can change ICANN policies. 5. I submitted a request to the ombudsman that ICANN consider revising it's policies. The ombudsman provided comprehensive and exhaustive recommendations on how to deal with my incident, which can be useful, but was NOT what I requested. All I was requesting was that ICANN re-evaluate its policies in this area. After further discussion, the ombudsman stressed his limited purview, and directed me to the web page outlining his authority, which I examined. I can see how he could claim that he had the discretionary authority to dismiss my request as inappropriate. I also see how he could have pursued my issue to at least some extent if he had wanted to. I am extremely disappointed that he actually chose to do the former. I do not understand why he did not even

	bother to forward my communication to the appropriate decision makers and say: "This guy had a problem that he believes could be addressed in the future by some policy changes. See attached" From my perspective this office (or the officer) is a sham. On the ombudsman website or from following links I read things like "positive change", "improvement", "I have the power of moral persuasion", "I can ...notify the board, give them notice that something is wrong". It is not until one reads the fine print that one discovers what a toothless hound the ombudsman can be when he cares not about your problem. Thanks for listening,
12.	Yes, if you guys do not maintain this office and some policing efforts eventually, the net will degenerate into chaos---it's already getting that way. I currently have a wierd problem going on where I was having thousands of spams on one site, and two came from my same IP although it should have been impossible. Most of us on the web are knowledgeable but not IT people: it looked for all the world like someone was 'sharing' our IP we didn't know about---I've had constant attempts to 'dial-up' screens although we have broadband. I have 9 years of work on the net on 7 sites, and the folks challenging my work are not people who need to have the upper hand on the net. I don't want 'policing' on the net, but if it isn't done, people will lose careers and lifetimes of work.
13.	I personally want to thank personally the Ombudsman for the prompt action taken in our case. It was simply EFFICIENT. My comments we need such an efficient way to tackle similar problems with other institutions in Malta like the Ombudsman did for our case. Big thanks Martin
14.	It should be mandatory for this office to assist consumers and general public on issues arising from the use of the Internet and the Domain Name System as a whole.
15.	The staff did not appear concerned about ignoring the ombudsman, and was hostile once we had contacted the ombudsman. It was certainly of no help, and may have made the situation worse by simply delaying the outcome we sought to avoid in a way that multiplied the negative impact.
16.	The correspondence I received was excessively formal and self-justifying. My problem (any problem with an ICANN issue) should have a solution within your org which does not automatically force me to get a lawyer or pay high fees to get justice! If there is an injustice, your org should have policies in place to handle a resolution at minimal cost. I was quite disappointed to note that the ombudsman position had so little power or desire to help me resolve my issue.
17.	Ombudsman has very limited "jurisdiction", no authority, and even less interest.
18.	There really needs to be a shark-toothed anti-domain parking venue for us real people whose sites are being hijacked by name-squatters. It's really in your hands to yank names away from people like that, such as in the case where I cited you cases against the group I was objecting to, having been sued successfully by Amazon and others, and they hold the name of one of our domains. I had to repaint my truck and reprint new business cards and tags because of your impotence and non-helpfulness.
19.	The rules for registrars in domain handling should be published somewhere because they lie thru their teeth to get you to renew with them when clearly their changing their policies after the initial registration.
20.	Very helpful, prompt and personal assistance. Only problem is, the successful squatter knows the market. If his price for my domain name had been significantly higher than the charge for going to arbitration I might have been inclined to bring the case. I was not prepared simply to pay extortion.
21.	I was and am disappointed. For example, I had a domain name that I let lapse. When I tried to retrieve it, it was purchased by someone who bought it just for the purpose of resale and wanted to charge me a lot of money even though he wasn't using it and it was the name of my company! I had no copyrights on the name. though. I would suggest you try to find any decent domain name. They have all be taken and 4/5 have been taken by

	speculators. ICANN says that's fine. I don't agree.
<u>22.</u>	In question 5, I rated most items as "expectations met" but in fact I am very pleased with those items. My expectations were very high, and they were met. If you had used to more customary scale to indicate satisfaction level, I would have rated those items at the maximum. The one item where my expectations were not met was timeliness. But this is not due to the ombudsman, it is due to the ICANN staff that was responsible for the problem in the first place. The ombudsman acted in a very timely manner.
<u>23.</u>	The Ombudsman exists purely to protect registrars and to allow them to continue to defraud their customers. The Ombudsman is a waste of time, money and space. The Ombudsman's office is atypical of a system that creates so-called 'independent' representatives, who in fact are no more that public relations people for the organisations they are supposed to investigate.
<u>24.</u>	Not happy with the service.
<u>25.</u>	A very biased, ridiculous organisation. If one is not from the US, forget it.
<u>26.</u>	The Ombudsman washed refused to uphold my case, despite it being valid because it was against one of the big three Internet registrars, namely 1&1 Internet (Schlund). The motivation to not represent my and others like my allegations was motivated by a wish to not upset the registrar rather than any degree of fairness. See the tear down analysis of this on www.wasitfree.com and www.bankraid.com .
<u>27.</u>	Complaints and Lawsuits (including Government) against the pseudo-governmental/corporate ICANN are all over the Internet, INCLUDING ICANN's absolute refusal to discipline it's ICANN Registrars for even the most aggregious violations. It's no wonder ICANN has already been the target of individuals, corporations, and governmental bodies. Pawning off it's Governmental/Corporate Responsibility (Including CA Business & Professions Code which it's subject to), on a "neutral" 3rd party would be like Enron's Execs deferring consumer & investor complaints to the local BBB for resolutinon.
<u>28.</u>	I wouldn't recommend the Office of the Ombudsman to someone else who had an ICANN related issue to resolve. As like I said there was a understanding on behalf of The Ombudsman of my complaint was about, as I didn't have a dispute with my Register, as I said a number of times in my email I don't have a register.
<u>29.</u>	waste of time
<u>30.</u>	No.
<u>31.</u>	i knew of no other resource for help regarding a problem with a registrar, and I had little hope that my problem would even be investigated or resolved. In fact, I expeced ICANN to side with the registrar as a 'professional courtesy'. I was surprised. The matter WAS investigated, I was contacted by the registrar who had wronged me, and the issue was promptly corrected. I have no complaints about how the Ombudsman handled the matter, and compliment ICANN on how this was handled.
<u>32.</u>	Our Registrar warned us that Ombudsman has a bad reputation and has only resolved a few disputes. There needs to be a better compliant form that better guides the user.
<u>33.</u>	The "whois" database is too open to anybody who wants to spam me, call me, etc... you need to restrict access.
<u>34.</u>	If they are to oversee the regestey of Domain names then why don't they want to do anything when a person is being hosed by the people who are to be working with and there is no way out.

<u>35.</u>	I don't know what the requirements are to file a formal complaint, but my email on my concern was pretty detailed. It would have helped me a lot to finish the process if the ombudsman just took what I'd already given and opened a complaint. I'm so pressed for time I just never got back to doing it, and my concern is about privacy. It's important.
<u>36.</u>	the registrar deleted my domain 3 months prior to it expiring and would show no reason why they did so. No one has officially contacted me directly regarding this matter
<u>37.</u>	I do not know who issued this survey, or to whom it will be reported. If someone outside the Office of the Ombudsman is conducting an evaluation of the Office of the Ombudsman, I would like to be contacted by them to report my experience with the Ombudsman to them.
<u>38.</u>	I was very frustrated with the answers I got. All I was looking for was a list of software vendors who provide registrar software to enterprise customers (not as a service). The answer I got was that ICAAN could not play favorites or recommend vendors and refused my request. All I was looking for was a list of vendors, not a recommendation!
<u>39.</u>	Stop acting like a political beauracracy full of hot air like the FCC and actually do something other than just collect fees. Should be the one stop Soloman for arbitrating disputes and business practices.
<u>40.</u>	The ombusman in Barbados even he could not investigated immigration issues, he took the time to call the Chief immigration officer and also because of his help I could talk directly to someone at the immigration department and through that eventually I could solve the problem.really Mr. Clarke in Barbados impressed me with his professionalism and with his interest in solving people's problem. He is a great public server.

Appendix 10

Third-party comment on the Client Survey

Comment on the Internet Corporation for Assigned Names and Numbers Office of the Ombudsman



Client Survey Report

**Prepared by John W. Zinsser
Pacifica Human Communications,
LLC.**

June, 2007

Executive Summary

The Internet Corporation for Assigned Names and Numbers (ICANN) Office of the Ombudsman (the Office) is executing a first-in-class assessment process. One assessment step (please see the other completed assessment components at www.icann.org/ombudsman/program.html) was a Client Survey, which was codified into a report (the Report). This Commentary verifies the claims made in the Report, offers alternative analysis and provides recommendations intended to inspire future-oriented action impacting Office of the Ombudsman operations.

In the Report, Frank Fowlie, ICANN ombudsman posits that Respondents to the Client Survey (with limited, notable exceptions) were “generally satisfied“ with services provided by the Office. Upon review of the Survey results and the Report this indeed appears true. This finding is basically positive, but there are concerns, among these: The Survey return rate was limited; Narrative responses tended to negative; and The majority of responses were from people with issues outside the mandate of the Office. This last point is the most important.

The Report, and especially the Survey results themselves offer nuanced and valuable information about both the Office and ICANN as an institution. Readers are strongly encouraged to examine each of these source documents and especially consider the narrative responses from the Survey.

The reasonably constructed survey instrument asked 17 questions of differing types, with multiple sub-elements for many of the questions. The Survey

queried far more than satisfaction. Perhaps better thought of as a “user experience survey,” the tool also asked: How well Users actually knew the Office; How they accessed the Office; and How they rate the Office’s website. The Survey process, in spite of any shortcomings should definitely be repeated at least annually, if not more frequent intervals.

Twenty-two percent of the 387 invitees for a total of 85 responses, answered all or portions of the Survey. A commercial third party hosted the Survey, to assure Respondent anonymity. The Report clearly conveys the actual answers provided by Respondents and offers interpretations of the responses.

Summarizing, the Survey engaged sound methods and the Report offered accurate findings, as well as many reasonable interpretations. It was greatly affected by the large number of Survey Respondents with issues outside the design intent and mandate of the Office.

This Commentary discusses certain considerations likely to result in Office enhancement (improving the quality of referrals and follow-up on those referrals) as well as survey design and process improvement (repeat invitations, make survey questions clearer, and ask about fairness). Irrespective of these possible improvements, the ICANN Office of the Ombudsman was found to be generally satisfactory to Survey Respondents, especially those with issues firmly within the mandate of the Office. Further, the Office provides assistance to those

with issues outside its jurisdiction, by helping them identify other potential resources. Therefore, the Office of the Ombudsman is likely serving, at a more than acceptable level and has once again proven itself to be potentially the single most completely assessed Ombuds Program in existence.

Introduction

In order to be both well understood and an optimal performing ombuds program, the Internet Corporation for Assigned Names and Numbers (ICANN) Office of the Ombudsman (the Office) has developed and initiated an exceptionally complete and deliberate assessment process. The Client Survey Report (the Report) and this analysis (the Commentary) of that Report are two components of that total assessment process. (Please see other completed assessment components and the management plan at www.icann.org/ombudsman/program.html.)

Commentary Purpose

The Report conveys the degree to which those who use the Office and responded to the on-line Survey were satisfied with the experience of working with the Ombudsman. The Commentary verifies claims made and analyzes the information presented, in order to increase the veracity of the Report and contribute to the improvement of the assessment process and Office performance.

ICANN, through the Ombudsman, requested this Commentary to assure the factuality of the Report's assertions. Simply stated the Commentary answers:

- Was the methodology sound?
- Were the findings/interpretations accurate and adequate? and
- Do the findings suggest adjustments to the Survey process, and/or the Office?

Selection, Qualification, and Process

Pacifica Human Communications, LLC. was appointed to conduct third party reviews of assessment components prepared by the ICANN Ombudsman, as result of a competitive bid process involving two other potential providers. Njeri Rionge, chair of the ICANN Board Audit Committee made the selection based on elements including: written proposal, cost considerations, and total qualifications. Using a highly qualified, third party to review the assessment components provides fact-checking and integrity testing of the Office's data and assertions, without breaching the confidentiality (actual and perceived) and independence of the Office. This process results in a degree of confidence that is higher than that if only first party review was conducted. Having conducted complete assessments of large corporate conflict management systems and other ombuds programs, Pacifica demonstrated singular experience to review the ICANN Office assessments. Pacifica's co-founder, John W. Zinsser, having written on the subject for more than a decade has been both a pioneering force

and consistent voice for measurement, evaluation and effectiveness assessment in the conflict management field. Zinsser is not only a theorist and researcher though; he also served as an ombuds. He was awarded the Office of Personnel Management's President's Award for Outstanding Federal ADR Program for, among other reasons, what the judges described as, "exceptional accountability initiatives," for his ombuds program at the Agency for Healthcare Research and Quality.

Context and Overview

While the two previous Pacifica commentaries on the Ombudsman's reports focused on fact-checking, this Commentary engages in more interpretation. The results of the Survey are the "facts." These "facts" are presented verbatim in Appendix Two of the Report. There is no "arguing" these are the facts; this is what people said and especially the narrative answers offer a candid, and earnest look at Users' experiences of the Office and perceptions of ICANN, writ large. There are though, issues of perspective for Survey responses, which must be considered. That is, certain responses demonstrate that many, perhaps even most, Respondents may not understand the intent, purpose and process of the Office.

This in itself is important learning for the Office and the organization, and must be addressed. Continued efforts to educate potential Users, but especially actual

Users must continue and even expanded.

The Satisfaction Question

Organizations enact ombuds programs to deal with conflict. Measuring an individual's or a collective's satisfaction with a conflict management program is not straightforward. Asking a person who brought forward a problem (who was likely predisposed to dissatisfaction) if the manner of the response was satisfactory, is delicate at best. Further, there is no standing evidence that "satisfaction" with a conflict management process equates in any way to any actual positive benefit or improved outcomes for either the individual user or the institutional host of the program. A generally accepted axiom though states that, if the one who utilizes the process is satisfied, they will be more likely to use it again if need be, or encourage others to use it, offering the process additional opportunities to achieve its mission. There is no proof though that even this is the case. Satisfaction with the process is considered "good" but is in fact unknown whether it contributes to program effectiveness or value creation.

Beyond the core question of the relevance of satisfaction, three critical contextual elements must also be recognized as impacting this Survey and the Report. So pervasive are these elements that to continue without carefully considering these would be unfair to the Reader and the Office, and potentially unethical.

First, and as was also addressed in both previous commentaries, the ICANN Office is an Executive Ombuds Program – meaning it is housed within an

institution but serves a population external to that institution. This is unquestionably the right design for the purpose of the Office. Few of these types of ombuds programs exist and almost no information regarding performance of these programs is known.

What is publicly known about executive ombuds program performance has been generated by the ICANN Ombudsman and this commentator.

While more is known regarding the performance of organizational ombuds (those who serve employees or students within the institution that house the ombuds) and classic ombuds (ombuds who are hosted by a political entity to serve a given public population often defined by geo-political boundaries) this information is far from complete, standardized, widely accepted or uniformly practiced.

Organizational ombuds programs have generated most of what is publicly known about the measurement of satisfaction. Many of the Survey questions employed were in fact informed by questions previously used in surveys conducted by organizational ombuds (including by this Commentary's author).

The relationship between organizational ombuds and their users dramatically differs from that between an executive ombuds and its users. The organizational ombuds more likely works with individuals or groups with ongoing and enduring relationships, all of whom are likely employed by, or otherwise engaged in

processes (student/faculty) of a single entity and thus on “the same team.” This dramatically affects strategies and tactics of the ombuds, as well as how users will perceive the ombuds and therefore be satisfied with them.

The ICANN Office serves a population that is not nearly as unified in their grouping: those with issues relating to internet assigned names and numbers. This distinct difference in relationship effects expectations of service and satisfaction.

This in part explains why scores for The Office on certain questions tend lower than for certain organizational ombuds offices, which have asked almost exactly the same questions. It is the author’s professional assertion that these lower scores are in part due to the nature of the Users’ relationship to ICANN and The Office.

The second related contextual issue that must be acknowledged is one of service/communication medium. The satisfaction surveys executed by organizational ombuds have considered relationships in which exchanges and service are provided by telephone conversation or face to face, and, with very rare exception NOT via email or internet communications. By stark contrast, the Office, in appropriate alignment with ICANN’s activities and mission, provides services exclusively via email/internet communications. (In fact, every Respondent to the Survey, was invited to take part by email, in response to an

email/or web based complaint form through which they initially contacted the Office). It is impossible to know what impact this difference in communication medium had on the Survey results, but it did have an effect. Unfortunately though, there are NO OTHER comparators available, other organizational ombuds programs. Thus comparing the results with other programs, is a complex proposition. These comparisons, while potentially offering some value also raised the commentator's initial concern because of the stark differences. Thus any comparisons MUST be considered academic first and foremost, and not direct comparisons.

Finally, and it cannot be overstated, the majority of Respondents to this Survey had issues for which the Office was not intended (see responses to Questions Four and Five, especially when Five is screened for high and medium jurisdiction on pages 44 and 45 of the Report.) Sounding the satisfaction of those who accessed a system to resolve conflict, only to find it did not apply to them almost completely guarantees low satisfaction.

It is against these realities and in these contexts that the Survey, the Report, and this Commentary must be considered.

The Report

In the Report, Frank Fowlie, ICANN ombudsman states that the Office has

satisfied those Users who responded to the Survey. The responses do fundamentally indicate this to be the case. While there is certainly positive “news” in this, there are also disconcerting information. The analysis that follows will examine and develop both of these.

Limitations

Only 22 percent of those invited to take the Survey responded. While not unacceptably low, this is lower than the response rates for ombuds satisfaction surveys executed by organizational ombuds in corporate, government, and academic settings. This could be due to the “relational distance” of the executive ombudsman model, or the difference between “human” and “mechanical” contact as cited above. More could have been done to increase this response rate and in the future should be (please see Recommendations).

The 78 percent of invitees who did NOT respond could be satisfied with their experience to a higher, lower, or exactly equal degree as those who did respond. There is no way to say. The common bell curve found in most survey responses generally flattens, suggesting that the “very satisfied,” and the “very unsatisfied” are motivated to respond, while the middle position is somewhat less likely to. Based on the answers to the primary question on satisfaction (Question Five), this author suggests more of the actual Respondents are positively than negatively disposed.

Also, responses to the check box questions are generally moderately more positive than the narrative responses. This suggests either: Those motivated to write narratives had actual lower satisfaction with the Office, or (and in the author's opinion more likely) disappointed with the lack of a response in a commercial situation (registrar or domain name), which is outside of the Office's jurisdiction, Users expressed their frustration in the only place they could— the narratives of this Survey. The Survey design enabled this situation, by making narratives more likely when the Respondent had an issue not intended to be addressed by the Office. Thus, narratives appear more negative, and harder to quantify.

Content

Accepting these discussed limitations, and following the format of the Report, this Commentary will consider each question posed, examine its purpose and results.

1.1 How did you hear about the Office of the Ombudsman?

Understanding how those who contact the Office come to learn of it is essential. Being able to refine approaches, broaden outreach in certain venues and/or diminish it in others can only be done well, if it is understood how those who are getting to the Office do so.

That almost 75 percent of Respondents discovered the Ombudsman through the ICANN website or internet searching shows the Office to be well aligned with the purpose and process of ICANN. This must be considered positive. ICANN is an internet organization. The Office is an internet based dispute resolution process. While this degree of on-line communication will raise immediate concerns for many ombuds practitioners, any such alarm is not founded in this instance. The nature of the Office, the size and breadth of its constituency, and the functional purpose of both ICANN and the Office make this mechanism for discovering and communicating with the Ombudsman more than acceptable, so long as one accepts the limitations it has for complete confidentiality. Additionally, Fowlie's assertion on page seven of the Report that, "...presentation of the Ombudsman's website is vitally important..." is completely accurate. A full and proper web presence is the gateway to the Office.

1.2 Can you tell us about your understanding of the Office of the Ombudsman?

The results of this question indicate the Office has more to do in order to ensure Users have a full and proper understanding of its processes. That the Office's potential universe of Users numbers as high as a billion, it is ludicrous to suggest the Office needs to completely educate all potential Users. Helping a broader spectrum of people to be AWARE of the program remains a worthwhile goal. However, it must not be mandated that all potential Users UNDERSTAND the

program. But that only 24 percent of Respondents understood the Office to practice ADR, or that 36 percent did not know that the mandate focused on fairness, shows there is room for the Office to improve the knowledge of those who do in fact contact the Office.

The wording of this question creates some ambiguity. Was the purpose to determine Users' perceptions before working with the Office? Or discover what they learned about the Office through working with it? This question would benefit from being better placed in time— i.e. “Explain your understanding of the Office PRIOR to communicating with us.” – and subsequent versions of the Survey should do so. It would then be possible to demonstrate if the Office meets the required educational burden, or if environmental and contextual realities dominate User understanding.

Given the high percentage of Users accessing the Office with off-mandate issues, this question is especially very important. Improving the responses and knowledge of those who do use the Office could well be a major performance objective for the Office.

1.3 How long ago did you access the Ombudsman's services?

The initial deployment of the Survey occurred after approximately 18 months of the Office providing service. As such, it is wise to determine if Respondents are

from a particular period or other. New ombuds programs of all types generally experience an “Inception Bump” in case activity. That is, after being established, a backlog of un- or under-addressed conflict tends to provide higher case levels. According to the Report though, on a month-to-month basis, case levels have been generally consistent. How the “aged” quality of Respondents’ cases affected Survey results is unknowable but certainly actual. Continued monitoring of this question in subsequent iterations of the Survey is needed.

The responses indicate 61 percent of Respondents contacted the Office more than six months earlier. While approximately balanced (two-thirds of responses come from Users in months 1 – 12 , and one-third from Users in months 13 – 18) it would be more common for recent Users to be OVER represented in the return rate.

Whether satisfied or not, the proximity of their case to the Survey should have driven more of them to respond. This raises the question why were those who had contacted the Office in the six months just preceding the Survey not better represented? Some potential answers: Were they better served and therefore more satisfied and less likely to respond? Were they not done with their cases? Not motivated to answer due to some other issue (confidence in the system, satisfaction level, the nature of cases)? There is no way to tell for certain.

However, Fowlie’s suggestion in the Report— “This indicates to me that there are a number of Respondents who have a desire to reach out and have voice over their issues...” seems inadequate. This situation deserves more attention, and

repetitions of the Survey may well provide some clarity.

1.4 What did you contact the Ombudsman about?

This seemingly innocuous question raises the single most important point of the entire Survey – the appropriateness of the cases brought to the Office. This has been heavily commented on already, but deserves additional attention. As the Report clearly states: “Less than 30% of correspondents contacted the Office about Jurisdictional issues, and 42% contacted the Office about domain name and registrar issues.” That a full two-thirds of Respondents to the Survey had cases that did not align with the purpose of the Office clearly predicts that satisfaction scores will be low. Something must be done to: 1. Educate those wrongly accessing the Office about its mandate, purpose and scope; and 2. Assure those with issues outside the Office mandate get some assistance with the challenges they face, from somewhere. ICANN must consider this, as currently those accessing the Ombudsman believe ICANN and the Office to be the source of assistance with these issues. (Please see Recommendations.)

1.5 If you used the Office’s services, how well did the Ombudsman meet your expectations with regard to the following?

This is the single most important question in the Survey. It is both well structured

and executed. The Report does an outstanding job parsing the data to make several important distinctions, premiere amongst these the importance of jurisdiction to User satisfaction. By “screening” this question by jurisdiction and outcome, Fowlie has yet again created a best in practice process that the entire organization conflict anagement field would do well to study and deploy. In fact, the data from this question deserves more attention then this Commentary can provide.

That said, it must be recognized, the results of this question, especially when considered from the omnibus perspective— that is undivided by jurisdiction and outcome, are NOT overly positive. With a high score of 6.79 (out of 10) for “Respect” and a low of 4.13 for “in providing an appropriate referral,” the omnibus score is, at best, passing. Especially for issues of practice, (confidentiality, timeliness, professional manner, etc.) scores above 8.5 would be more typical of the results achieved by organizational ombuds.

When responses are “sorted” by jurisdiction and outcome, the scores do dramatically polarize. As one would expect, those with cases within the Office mandate where the case was resolved, and the Ombudsman took an active role, had much higher scores with an “Overall” score of 8.0. By contrast, the “Overall” score for the Office in cases where the issue had to do with “My registrar or domain name,” (i.e. out of jurisdiction) and the Office “declined to investigate,” (i.e. low Ombudsman action) fell to 2.0. In both the above examples though, these scores are constituted of a very small percentage of all Respondents. The

very satisfied Respondents with high jurisdictional cases with clear outcomes from Ombudsman action number only three (3). The far less satisfied group with nonjurisdictional cases where the Ombudsman declined to investigate number only six (6). As this Survey is repeated and these screens reapplied to new responses, the data set will become more complete and meaningful. Then, with that data in hand, it will be a better time to determine the true satisfaction rating of the ICANN Office of the Ombudsman.

On page 13 of the Report, there is an excellent graph entitled, “Satisfaction based on Jurisdiction and Outcome” (reproduced below). This graph clearly captures the essential issue described in the paragraphs above, with the exception of the small respondent sets.

Analyzing the responses, an additional important point emerges: The range between high and low is approximately half as large for High Jurisdiction/High Outcome (1.67) as it is for Low Jurisdiction/Low Outcome (3.0). This means that there is greater uniformity of experience among those with “satisfactory” experiences with the Office than those with “unsatisfactory.” This is a potential field critical discovery. ICANN through the assessment of the Office of the Ombudsman continues to contribute important new thought to the field.

1.6 If you did not have the option to correspond with the Ombudsman about your issue, where would you have gone to get help?

This question serves two important purposes. It provides an insight into options besides the Office that Users might have otherwise employed. It also makes clear the degree to which Users had knowledge of these options. The mental process of “removing” the Ombudsman Office from the list of possibilities often makes clear the benefit and even the value of having the Office as an option. The findings for the ICANN community bear this out. Over half of all Respondents indicated that had it not been for the Office, they would not have known where to go. This means that the Office plays an important navigational role: helping individuals without knowledge of where to go, discover possible routes to resolution. This is true even for those Users with cases that are not within the jurisdiction of the Ombudsman. The Office, therefore, aids indirectly those who it is not intended to assist, by providing them with support in finding more appropriate resources.

Responses to this question also suggest, had it not been for the presence of the Office, Users would likely have accessed more formal and costly options to address issues. The second and third most common choices, had the Office not been available for all Respondents were, “consult a lawyer” and “initiate legal action.” Each of these answers would likely incur significant costs for the Respondent and could possibly have resulted in processes that would have later consumed resources for the Respondent, other members of the ICANN Community, and even ICANN itself. It is possible in this way, by preventing

future formal actions, the Office creates value for Users and ICANN. This issue is addressed again in question 1.9 below, but requires more study before full claims of value creation can be substantiated.

1.7 What was the result of your communication with the Ombudsman?

On page 15, the Report states, “This question measured how the correspondents considered their complaints to have been closed...” The question would have better achieved this intention by asking more directly, “How did this case resolve?” Or the like. The current framing is too nebulous. This is borne out by the significant difference between results for this question, and the Office’s own statistics for case closings. For example, the Office statistics claim the 45 percent of all cases were closed via referral, while only 15.5 percent of Respondents thought that was the method of closure. In the Report, Fowlie suggests this difference is due to, “...a mass of those who received either self-help information or referrals did not participate (in this question author’s addition). “

The author disagrees and believes rather this difference suggests two possible and related conclusions: Users do not perceive closing methods as does the Office, and the method in which the Office communicates its closing process to Users is not as effective as it might be.

The ICANN Office, as an executive ombudsman, is empowered to make

judgments regarding cases which organizational ombudsmen are not.

Organizational programs often struggle to determine when a case is closed and how it was closed, because the closed status is actually determined by the user. For the ICANN Office, being able to decide when and how an issue is raised raises a different problem, that of separation with User perception.

1.8 If you received a referral or self help information from the Ombudsman, did it assist you in resolving the matter?

As the Office tracked 68 percent of all cases as having been closed through referral and self help information, it was essential to examine the degree of satisfaction with this process. The well-framed and positioned question further extends the issue of a perception gap between the Office's definition of how a case was closed and User perception of closure, raised in question 1.7 above. As the Report states on page 17, "...almost two and a half times as many people replied to the qualitative question (1.18) as they did to the quantitative question (1.17) on the same subject matter." This could have been controlled in Survey design by making the qualitative question dependent on the answer to the quantitative question. But more importantly, this difference in response rate strongly demonstrates the gap in User perception of the closing event and the actual case closing mechanism.

Beyond the perception issue though, the results of this question also make clear the Office needs to examine its referral and self help process. At this time, they

scored as mediocre at best. Fully 67 percent of those with issues regarding their registrar or domain name (outside of Office jurisdiction) found referral and self-help information NOT helpful. As so many coming to the Office bring cases of this nature the strategic choice must be made— improve the referral and self help offered to them, or draw a hard line that makes clear it is not the Office’s mandate to assist them, and therefore, remove them from the satisfaction Survey. Given the Report’s statement on page 25 where it considers future actions, ” ...attention should be paid to finding methods of monitoring and reviewing both self help and referral closings...” it would seem the decision has been made to positively impact the type of service offered via referrals and self help information. This is a sound decision that deserves appropriate support from all levels of ICANN.

1.9 After the Ombudsman corresponded with you at the end of his work, what did you do?

As the Office makes determination about when cases are closed distinct from the perception and preferences of Users, it is essential to examine, what if anything Users do after that determination.

Almost 40 percent of the Respondents do nothing more, once the case is deemed closed by the Office. A worthwhile future performance measure for the Office would be to increase this number. As this question’s score went higher,

with no subsequent action by Users, it would be possible to say that User perception and Office definition was unifying, and that the Office was more completely satisfying Users' need for assistance.

However, the information of what Users DID do after the Office determined the case to be closed is also important. It suggests that the Office may well be creating significant value for ICANN and its community.

In response to question 1.6, 22 individuals indicated, had the Ombudsman not been available they would have made subsequent contact with a lawyer or initiated legal action. Responses to 1.9 show that only four Users did contact an attorney and three initiated legal action. This equates to 66 percent reduction in contacts and initiations due to Ombudsman involvement. Extrapolating this information, assuming that it is representative for ALL Office Users, it is possible that the Office may have provided services that led as many as 66 parties to not contact an attorney or initiating legal action. ($(85/387)*22=100$ cases with the possibility of lawyer contact or legal action initiation. A two-thirds reduction from 100 possible cases results in 66 "redirections.")

The results of question 1.9 point strongly to the likelihood that the Office of the Ombudsman creates significant value for ICANN and its community, especially registrars. With some additional effort and study, it would be possible to determine how much value is saved and/or created. This would offer the Office

the ability to provide a cost benefit analysis to ICANN and the Community. This is a highly recommended course of action.

1.10 If you contacted the Ombudsman in a language other than English, were you satisfied with the translation service?

There were six answers to this question. Indeed not a great deal of data. That said, four of the six answers were negative. Some concern and attention should be given to examining the quality of the translation services employed. Future iterations of the Survey must repeat this question, provide space for narrative comments and potentially provided hypotheses as to why the translation services were negatively reviewed (Time consuming? Inaccurate? Other?). A performance goal of inverting the scores for this question to two-thirds positive would be advisable.

Scores for this question could also likely be effected – increased data, changed scores – if both the Survey and the invitations were offered in the various languages for which translation services were accessed in the previous period. That is, if the Ombudsman contracted for French, German, and Spanish services in the preceding period since the Survey was executed, invitations in each of those languages, and Surveys could be made available in French, German, and Spanish.

However, there is a significant question of practicability here. The costs for providing translated invitations and surveys, and then translating all answers could well be prohibitive. Currently, less than three percent of all cases involve languages other than English. The question becomes one of balance and intent. Is understanding the satisfaction level of this three percent important enough to the Office and ICANN to incur both the dollar cost and effort required. What is ICANN's goal for non-English speaking constituency? These tactical and strategic considerations must be addressed.

1.11 Can you tell us about your experience with the Ombudsman webpage?

1.12 What part of the webpage did you visit?

1.13 If you have read the Ombudsman's Annual Report, what language did you read it in?

1.14 If you read the Annual Report, did you learn about the role of the Ombudsman?

Questions 1.11 – 1.14 all refer to the Respondents' experience with the Office's website, and therefore will be jointly addressed.

As established in question 1.2 above, the Office's web presence is the key portal for Users to gain access to the Ombudsman. Therefore, the web presence is vital. Even so, these questions might well be moved from the Survey to the website itself. First and foremost, those Users interested in accessing the Ombudsman, facing a pressing issue are most interested in assistance. Likely

they are not interested in deep background information at this point. Again, based on results of the Survey the majority of people accessing the Ombudsman did NOT have cases in the Office's jurisdiction. This IN-SPITE of the fact that the Office's mandate and jurisdiction are well and carefully outlined on the website. Therefore, while the website is crucial for access it seems not to be an effective tool to ensure learning about the program. Secondly, there are a group of people who access the website NOT for the purpose of making contact with the Ombudsman. Their input on the website is being lost at this time, as only Respondents to the Survey have the opportunity to express their opinions. Specifically to Question 1.14 it should be noted that the omnibus score for all 34 who did respond was 2.58. This means that more than half of all Respondents to the Survey did not answer the question— suggesting they did not read the Report.

Further, for those Respondents who did read it, they found the Annual Report just slightly above neutral in terms of satisfaction for learning about the Office. This suggests that an electronic version of the Annual Report is not the best way to ensure potential Users receive information about the Office.

1.15 Would you recommend the Office of the Ombudsman to someone else who had an ICANN related issue to resolve?

This question draws on the fundamental assumption of satisfaction with conflict

management processes discussed earlier on page three— satisfaction with the process will likely lead to additional opportunities for the process to be used. Given the positive sentiment expressed in Question 1.5, by those with cases within the mandate of the Office, limited in number as they may be, it is somewhat surprising that only 59 percent of Respondents answered that they would recommend the Ombudsman. This does not compare favorably to responses to the same question posed by other ombuds programs. For example, the Vrije Universiteit Program in the Netherlands received an 80 percent score to this same question. The author repeated a 100 percent score for this question in all three iterations of the Ombuds Program User Questionnaire executed at the Agency for Healthcare Research and Quality between 1999 and 2003. While both of these programs were organizational instead of executive (and that may explain the difference) focusing on improving the likelihood that Users will recommend the Office to others is a very worthwhile performance metric for the ICANN Ombudsman to pursue.

1.16 Where do you live?

Responses to this question aligned very closely with tracking statistics kept by the Office. That is positive. This question though adds perhaps the least of all to the Survey's understanding of Users' experience with the Office, and therefore might well be deleted from future surveys without real loss. That said, the

strategic question of serving the international community raised in above under Question 1.10 could predicate the question remain.

1.17 Is there anything else you would like to add to assist our evaluation of the Office of the Ombudsman?

This question affords the greatest opportunity for unanticipated learning of all in the Survey. Including it was a good decision, as evidenced by the 40 responses. These responses are impressive on two levels: First it is a significant proportion of the total set of Respondents that added additional information. This speaks to a strong motivation, both positive and negative, to express thoughts on the program.

Second what was written includes several important insights into the Users' experience of the Office. The responses, a mix of affirming and condemning comments, merit attention by anyone truly interested in ICANN, its constituency, and the Office of the Ombudsman. This is the single most meaningful set of responses in the Survey. Reading this set of responses is the most concise way to understand the current experience of the Office of the Ombudsman Users and is therefore strongly recommended.

Comment

While much of what is written here is critical and suggests adjustments and improvements, it must be borne in mind, this is a valuable activity, done for the first time in the setting of an executive ombuds program. There is much here that is positive and useful. As is the nature of commentary though, the focus is on that which can be improved.

Recommendations

The Client Survey and the Report by the ICANN Office of the Ombudsman appears sound and suggests overall the Office performs more than adequately, especially for those with issues of the nature for which the program was intended.

In preparing this Commentary, several issues rose to the author's attention that could impact the Office and its performance, and its future measurement. These have been grouped into three areas – The Survey, The Office of the Ombudsman and ICANN. Careful consideration and appropriate action in regards to each issue will likely enhance the Office, and help improve understanding of its actual performance, including as regards satisfaction.

The Survey:

Repeat the Survey

Regardless of any shortcomings of this Survey, its value outweighs its costs.

The learning afforded both The Office and ICANN is significant. If repeated, especially with minor adaptations described herein, the Survey will increase in value, as the longitudinal nature will suggest whether and in what ways The Office is continually improving. Further, repeating the Survey at regular intervals, preferably yearly, in addition to indicating trends in use and focus of The Office, will reinforce with the user population that both The Office and ICANN are concerned with their opinions and perceptions.

Improve User-friendliness of and repeat survey invitations

The 22 percent response rate for the Survey invitations should be improved. Two elements would likely increase the response rate— user-friendliness and repetition of invitations/reminders to participate.

The Office provides introductory information and annual reports in multiple languages. However, the invitation to take part in the Survey and the Survey itself were each offered only in English. While the overwhelming majority of the Office's cases were conducted in English, interpretation services were available and utilized for casework. Therefore, the Survey and its invitation should also be available in any language for which interpretation services were utilized, and any other language in which the Ombudsman managed casework. The invitation could be made more user-friendly by describing the period the Survey would be open, the benefit to the organization and future Users, and an assurance of

confidentiality. This information would likely stimulate increased participation. Another effective way to increase the response rate is to repeat the invitation during the period the Survey is available for completion. Pages four – six of the Report indicate that the invitations were sent once and that all responses to the Survey were made within the first 10 days it was available. NO responses were made in the last seven days. Repeating the e-mail invitation at least once (e.g. midpoint of the open period or the day prior to closing) if not more, with a minor modification of thanking those who already responded, would almost certainly increase the response rate. The potential exists that an individual could answer the survey twice. A second invitation might increase the possibility of this. Obviously this would impact the Survey's data. However, one or two repetitions would be nullified by an increase in the response rate of 10 percent or more. Finally, in the author's experience executing similar surveys there has been no evidence of repeat responses due to repetition of invitations.

Edit or alter certain Survey questions for clarity

While overall reasonably structured and clear, the phrasing of certain questions weakened the Survey. Minor alterations would likely return more useful data.

Three particular questions to improve include:

1.2 Can you tell us about your understanding of the Office of the Ombudsman?

As Fowlie writes on page eight of the Report, “The purpose of this question was to attempt to understand the pre-disposed expectations that the community might have in contacting the Ombudsman. The results indicate a limited understanding of the Office of the Ombudsman.”

This question lacks needed specificity. The question needs to ask for the Respondents’ understanding either prior to or after contact with the Office. An alternative wording could be: “Prior to contacting the Office of the Ombudsman, what was your understanding of its purpose and procedures?”

Adding a question to learn if Users’ understanding changed through using the Office, as well as how, is recommended. This question would discern if and how the Office helps Users understand its functions and limitations. It could also reveal what, if any, other factors interfere with Respondent understanding.

1.5 – If you used the Office's services, how well did the Ombudsman meet your expectations with regard to the following?

This question is the most important element of the entire Survey for determining satisfaction. Introducing the element of “expectation” was an error though, as it creates a non-calibrated sliding scale based on individually defined expectations for the Office. Someone starting with quite low expectations, having them met, may score this question affirmatively. Someone with higher hopes, who actually

was more satisfied in truth, scored the question lower, because of the high expectations. This is well presented by a Respondent who provided an answer to question 17 by writing,

In question 5, I rated most items as "expectations met" but in fact I am very pleased with those items. My expectations were very high, and they were met. If you had used a more customary scale to indicate satisfaction level, I would have rated those items at the maximum. The one item where my expectations were not met was timeliness. But this is not due to the ombudsman, it is due to the ICANN staff that was responsible for the problem in the first place. The ombudsman acted in a very timely manner.

Additionally and potentially more importantly, expectations can be misguided or inappropriate, i.e. exceeding the mandate/abilities of the Office. Reframe the question to satisfaction, accepting some difference in definition of will exist. Anyone who did not avail themselves of "the Office's services," should not be answering this, or any other question. An alternative rendering could therefore be: "Based on your experience with the Ombudsman's services, how satisfied were you in regards to each of the following?"

1.5 If you did not have the option to correspond with the Ombudsman about your issue, where would you have gone to get help?

The wording of this question leads Respondents AWAY from providing information that could have been more useful. The phrases “to correspond with” and “get help” change the focus to one of assistance rather than the process of issue management. The question would likely return more useful comparative information if written, “If the Ombudsman Office was not available, what would you have done?”

1.6 What was the result of your communication with the Ombudsman?

This question appears to ask for an outcome clarification. The results of this question, however, demonstrate Respondents had differing perceptions. (Respondent answers did not align with statistical tracking with the Office). The choices provided primarily consider process choices (referral, investigation, etc.) and did not adequately specify the difference among these choices. It is unlikely that a Respondent could both recall and understand the difference between “the issue was investigated” and “the Ombudsman took action and the issue was resolved.” That most Respondents chose the narrative option, and that many of these answers could be categorized among the options provided, reinforces that Respondents were confused about the options. Alternatively, Respondents may not have accurately recalled what actually happened. There are multiple illustrations throughout the Report (mentioned earlier) that show User perception of process and outcome differed from the Office’s recording of what occurred.

The separation between response percentages and the Office's tracking statistics (Report pages 15 and 16) suggests this.

Use a separate question to query each process and outcome. Example: "As a result of working with the Office what occurred?" (List of potential process) and "What was the Outcome?" (Unresolved; Resolved; Withdrawn; Other.)

Ask about Fairness

"The purpose of the Office is to ensure that the members of the ICANN community have been treated fairly." This is the core mandate of the Office. However, the Survey never directly queries Users about this. A simple question, likely near the end, should be included. It might read, "Did your interaction with the Ombudsman impact your sense of being fairly treated by ICANN? Please explain how or why not." Querying User perception of this core mandate is highly advised for future iterations of this Survey.

The Office of the Ombudsman:

Improve Users' understanding of function at onset of cases

This Commentary endeavors through repetition, to make clear the consequential negative impact on the satisfaction scores created by those, with an issue outside of jurisdiction, accessing the Office. Many comments describe the

frustration of these Users as they attempted to resolve an issue they BELIEVED the Office could address. It is possible, based on the screened results to Question Five, that as few as seven of the 86 Respondents actually had cases squarely within the mandate of the Office (Report pages 44 and 45). Quite simply, the overwhelming majority of cases represented by Respondents to the Survey are not within the program's purview. The process of educating these individuals as to the scope and mandate of the Office was not adequate. Efforts to expand both pre- and post-contact education as to the limits of the Office will improve future satisfaction survey scores, and more importantly, reduce frustration and dissatisfaction of key constituents with both the Office and ICANN.

Advance User benefit from referrals and follow-up in these situations

On pages 60 and 61, the Report presents how helpful Respondents found the referrals or self-help information they received from the Office. These scores are some of the lowest in the entire Survey. Sixty-three percent of all those responding to the question, found the information/referral they received of no help in resolving their issue.

Of course, the Office has no "authority" over those to whom it refers and can therefore not guarantee any type of response. However, it does appear that contact from the Office makes a difference with these outside institutions. A few responses described how an email from the Office to a registrar or other entity

made a dramatic positive difference.

Additionally, it is unclear whether the Office executes any kind of follow-up with either the User or the party to whom they were referred. Both pre-issue contact with those likely to be referred TO, and post referral follow-up to both parties would likely improve both the satisfaction scores AND the actual benefit Users obtain from these referrals. On page 18, the Report discusses this issue. Rather than addressing it from a “service” prospective, it focuses on how to adjust the design of future surveys, to determine if the referral was correct but unhelpful or simply incorrect. This would indeed be an advancement to the Survey. The Office and Users though, would both likely benefit more from a process/protocol adjustment including post referral follow-up, rather than survey alterations.

ICANN:

Address the misperception of managing broader issues

While it is well beyond the scope and intent of this Commentary, much of what Users of the Office state about ICANN, and indeed the internet could, and perhaps should, inform ICANN leadership in future decisions and actions. Thus, it is strongly recommended that ICANN leaders examine the results, especially as regards beliefs expressed in narrative responses to Questions Four and 17.

Many Users seem to believe the Office should manage issues such as: domain

squatting, domain registrations/eliminations and other similar issues, as described in the narratives for Questions Four and 17. By extrapolation, this means these Respondents believe ICANN is positioned to respond to these problems. Both the Office and ICANN must better address this misperception, or the negative reaction to both, for something neither is intended nor able to address, will likely grow.

Communicate with all, especially Survey Respondents, on findings

Secondly, ICANN must, in conjunction with the Office, communicate the findings of this Client Satisfaction Survey and this Commentary. This needs to be executed with the universe of potential Users and past Users, and especially the specialized subset of Survey Respondents. There are as many as five requests in the Survey responses for someone other than the Ombuds to review the responses and even communicate with those providing the response. Two examples are:

Thank you for this opportunity to provide feedback on the office of ombudsman. I hope someone other than the ombudsman reads it. Simply put, I was very disappointed.

... (Question 17/ Response Other/ Answer 11.)

I do not know who issued this survey, or to whom it will be reported. If someone outside the Office of the Ombudsman is conducting an evaluation of the Office of

the Ombudsman, I would like to be contacted by them to report my experience with the Ombudsman to them. (Question 17/ Response Other/ Answer 37.)

These individuals expressed a desire to raise their voice regarding ICANN and the Office. Properly acknowledging these requests would in fact show that the Office was rigorously and honestly assessed and that ICANN listens and is responsive.

Direct contact with particular Respondents is likely impossible because of the anonymization process. But, it would be injudicious for ICANN to miss the poignancy of these requests. No recommendation in this Commentary has more import to the future viability of The Office and its capacity to benefit ICANN. Failure to show some consideration and recognition of these requests will likely lead to a group of former Users who believe The Office and ICANN are predisposed to not listen or be responsive. This is in fact not the case. This review of the Report in fact ensured that someone other than the Ombuds saw issues. ICANN and the Office have both demonstrated considerable openness and courage throughout the assessment process. Each deserves credit. Not responding to these requests with some form of meaningful response will, to some extent, negate the quality of the action and integrity that ICANN and the Office have displayed to this commentator to date.

In addition to the benefit likely gained by reporting back findings of the Survey to

those previous Users, it is simply a best practice to provide this information to all. For too long, ombuds offices, of all types have failed to report on their performance in any meaningful way. ICANN's Office of the Ombudsman has conducted more assessments and reported on these assessments to a degree only a few other world class programs can claim. The Office has posted to its website all of its assessment activities to date. Even so, ICANN MUST make an additional and special effort to actively respond to the findings of the Survey, the Report, and this Commentary.

A possible response could include:

- An additional comment by ICANN leadership posted to the website, expressing support for the Office, and making clear that board members or other appropriate parties, would be open to receiving communications from those who use the Office or respond to the Survey.

Other responses are of course also possible. The only unacceptable response though would be inaction on this issue by ICANN or the Office.

Conclusion

The ICANN Office of the Ombudsman has developed and initiated one of the most complete, deliberate, and meaningful assessment processes known. This

latest step in that assessment process, a Client Satisfaction Survey, now allows the Office to say that it largely satisfies Users, who responded to the Survey. This was the case, even when the majority of Respondents brought cases beyond jurisdiction to the Office.

Findings of the Survey also allow the Office to state that Users with issues within its jurisdiction were in fact highly satisfied. Responses also suggest that the Office is particularly called on by parties who are unclear as to their options. Therefore the Office serves a navigational function. While this is a net positive, responses suggest that a major forward step for the Office is to improve its capacity to make references and to follow-on with those made to assure satisfaction and benefit. Survey responses also suggest the Office creates value for the Users, the regulated community, and ICANN by assisting parties resolve issues without resulting to court filings and use of attorneys. Further examination of this issue, an intended part of the continuous assessment process, is required to solidify this claim.

In summation, the Client Satisfaction Survey engaged in a more than reasonable methodology that lead to a legitimate sounding of satisfaction with and User experience of, the Office of the Ombudsman. The Report adequately captures the sense of the Survey responses and reasonably interprets the responses. Certain Survey and Office operational adjustments likely to result in program enhancement, if enacted, were discovered through the Report's analysis of the

Survey, with additional such findings discovered through this Commentary. ICANN, the community it regulates, and the ombuds field in its widest definition do benefit from the Office and its assessment activities. There is every reason to believe this will continue. Further, it appears likely the benefits to each of these groups will grow as the ICANN Office of the Ombudsman continues.

Appendix 11

A Practitioner's Guide to Evaluating Ombudsman Offices

A Practitioner's Guide to Evaluating Ombudsman Offices

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INTRODUCTION

Ombudsman Offices are a unique entity in a world of governments, corporations, colleges and universities, care facilities, and consumerism. Unlike the balance of work units in these various agencies, the Office of the Ombudsman operates with independence, and as an independent officer, may be resistant to evaluation by the organisations it oversees. Such evaluation may be seen to fetter the Ombudsman's ability to fairly come to a resolution of issues raised by complainants; or likewise could be perceived as a threat to the existence of the Office.

Historically, the evaluation of Ombudsman Offices has consisted of value for money audits, or by using case studies to demonstrate individual or systemic improvements to administration with the Ombudsman as a catalyst for change. This is an evaluation program that is designed for Ombudsman practitioners, by an Ombudsman. It will provide Ombudsmen with self evaluation tools they can use in house.

This is a "how to" guide for Ombudsmen to evaluate their operations. It is based on the experiences of an Office of the Ombudsman, and academic research in the field. This is not a cookie cutter approach to evaluation. There are three broad classes of Ombudsmen, classical or governmental, organisational, and executive or hybrid Ombudsmen. Each of these types of Ombudsmen has a different focus in terms of clientele, agencies they oversee, statutory or

procedural establishment or powers, and out-reporting requirements. This how-to guide honours the fact that no two Ombudsman operations are exactly alike. Practitioners may find that some parts of this evaluation guide don't apply to the work they do, or the environment they work in. The process of evaluation should fit the practitioner's circumstances, and not the other way around.

An important implication to emphasize from this research is the idea of using peer Ombudsman to help with each other's evaluation. For example, an Ombudsman from one university may provide commentary on another university Ombudsman's self assessment using the "Fifty Questions for Self Evaluation" tool. The use of peer practitioners implies that a knowledgeable, independent third-party is opining on the evaluation, and this increases the perception of veracity when out-reporting of the evaluation takes place. Peer evaluation also reduces cost, and provides a certain level of trust with respect to handling the confidential information which may be accessed by the peer evaluator.

Why Evaluate?

There are several reasons that Ombudsmen would want to conduct evaluations of their Offices:

Demonstrating Value

Evaluation processes help to demonstrate that the operation of the Office provides value by not only economic savings, but also by improving systems, and enhancing the organisation's reputational value.

Is it working?

With an evaluation strategy the Office can demonstrate that it is competently delivering its program and discharging its mandate.

What can be improved?

Evaluation tells us if there are issues, processes, connections, values, or orientations which could or should be improved.

What are the successes we can celebrate?

Through the evaluation process we can underline those successes which both the Office and agency can celebrate.

Ensuring service standards

Evaluation allows us to see whether the Ombudsman is operating a professional program which meets industry standards.

Demonstrate integrity

By an open and transparent evaluation and reporting process the integrity of both the Office, and the assessment process, is demonstrated.

The Ombudsman can use the evaluation process to document the need for changes to its mandate, budget, programs, or staffing levels.

In addition to these reasons the host agency, government, or corporation may wish to evaluate the Office of the Ombudsman to consider the retention of the incumbent.

First Steps – Planning the Evaluation

An RMAF¹ provides Program Managers with a concise statement or road map to plan, monitor, evaluate and report on the results throughout the lifecycle of a program, policy or initiative.²

The RMAF is a tool to assist an entity in developing a long term evaluation strategy. By applying these principles and developing a “road map” for evaluation, the Ombudsman may consider evaluation on an ongoing, mid-term, and long-term basis. The advantage of establishing an RMAF process for an Ombudsman entity is that it allows the Ombudsman and stakeholders to have meaningful and relevant evaluation criteria in mind for several years, as opposed to ad hoc, unplanned or unfocused evaluations.

The review schedule and principles found in the RMAF may be equally applied to newly formed or existing Ombudsman operations. This may mean that existing Ombudsman operations will need to consider where they are in terms of age and development of the Office and then apply mid-term or formative evaluation, or final or summative evaluation criteria.

An RMAF or evaluation plan should consider a multi-pronged, multifaceted approach to truly reflect the complexity of Ombudsman activities. A multi-

¹ Results-based Management Accountability Framework

² Centre of Excellence for Evaluation, Results-based Management Directorate, 2005, **Preparing and Using Results-based Management and Accountability Frameworks**, Treasury Board of Canada http://www.tbs-sct.gc.ca/eval/pubs/RMAF-CGRR/guide/guide_e.pdf (accessed January 20, 2005) p4

pronged approach indicates that the evaluation information has come from a variety of sources. It would include the evaluation of criteria from various sources: the wider community; clients and complainants; the organisation or state; the media; and internally. The multifaceted approach will mean that the information is not gathered in one manner. A strong multifaceted review would include a number of measurement tools such as: interviews; surveys; application of ISO standards; economic impacts; systems improvements; and media monitoring. With a more inclusive mix of stakeholders, and a broad set of indicators and tools involved in the evaluation process, the Ombudsman or his organisation will gain more accurate insights into performance, activities, and perceptions.

Results-based Management Accountability Framework (RMAF)

The RMAF is a document which is created by an entity or its stakeholders, and which provides a long term plan for the evaluation of the entity. The RMAF identifies evaluation questions and performance indicators on an ongoing, formative, and summative basis. By creating these questions, and then determining criteria which can be demonstrated by performance milestones, objectivity, credibility, and clarity are added to the evaluation process. An entity which has an RMAF may collect data which relates to the performance indicators over a period of time, and this will provide for an economical and standardized evaluation process.

The RMAF contains several sections, the most critical being the development of the basic evaluation questions, and criteria which they generate. This research is not dedicated to the analysis of RMAFs generally, but rather with the application of an RMAF model for use as a tool in the Ombudsman evaluation process.

Treasury Board Secretariat (TBS) documents³, as an example, provide readily accessible documentation on the preparation of the RMAF. The intent of this research is to apply the RMAF framework in practice. The RMAF is divided into four principle areas:

- A profile of the office
- A logic model
- An evaluation strategy
- A reporting strategy

The Treasury Board RMAF is held out as a template only. The Office of the Ombudsman may operate in an environment where evaluation planning or accountability frameworks are suggested, implemented or predetermined by the agency, organisation, or government which the Ombudsman oversees. It would be advisable for the Ombudsman planning document to be presented in a similar language, look and feel, and format as the institution.

Ombudsman Office Profile

³ Centre of Excellence for Evaluation, Results-based Management Directorate, 2005, **Preparing and Using Results-based Management and Accountability Frameworks**, Treasury Board of Canada http://www.tbs-sct.gc.ca/eval/pubs/RMAF-CGRR/guide/guide_e.pdf (accessed January 20, 2005)

The profile is a narrative which provides definition and context for the existence and function of the Office of the Ombudsman. It should contain several components which provide the reader with a concise portrait of the operations.

Origin and rationale

The questions of when and why the Office of the Ombudsman was, or will be, instituted should be addressed. Precipitating events such as compliance with a court ruling, public concerns, democratic initiatives, etc. should be noted.

Mandate and Objective

The two questions of where the Ombudsman's mandate is established (statute, policy, bylaw, collective agreement etc) and what the mandate is (internal, external, or executive) should be addressed.

Governance structure

This section should describe the lineage between the Office of the Ombudsman and the entity it oversees. It should describe the communication and reporting links between the Ombudsman and the entity. If the Office of the Ombudsman is larger than a sole practitioner, then the RMAF should describe that structure. In both cases the use of organigrammes or flowcharts may be useful.

This section may also describe the relationship, in terms of membership or accreditation, with professional bodies (United States Ombudsman Association,

International Ombudsman Association, International Ombudsman Institute, Forum of Canadian Ombudsmen).

Clients

The RMAF should concisely consider who the eventual users of the Ombudsman's services may be.

Delivery Approach

The RMAF should provide indications of how the program will be delivered, and how the Ombudsman will engage the client group. This will vary based on the mandate of the ombudsman and the entity it oversees. An organisational ombudsman in a single locale firm may rely on a face to face delivery; while Canada's newly created Federal Victim's of Crime Ombudsman may use a number of delivery mechanisms, due to geography, mandate and varying degrees of client literacy.

Final Outcomes and Planned Results

This section should provide a linkage between the bottom line activity of entity, and the outcomes provided by the Ombudsman. Statements such as, "Ultimately, ICANN is working towards a stable, secure, and universal Internet. In working towards that goal, the Office of the Ombudsman will assist ICANN by...",⁴ assist in this definition. The simple activity of creating this linkage may in and of itself,

⁴ ICANN Office of the Ombudsman, 2005, **Results-based Management Accountability Framework**, <http://www.icann.org/ombudsman/documents/rmaf-08feb05.pdf> (accessed January 28, 2007) p4

assist Ombudsman in the evaluation process. For example, an Ombudsman may ask such questions as: Does our operation assist in creating a good work place which produces an economical and useful product? Does our operation assist in the proliferation of democracy and the protection of rights?

The Logic Model

Logic Model — (also referred to as Results-based Logic Model) An illustration of the results chain or how the activities of a policy, program or initiative are expected to lead to the achievement of the final outcomes.

Usually displayed as a flow chart. ⁵

The Logic Model is a key component of the RMAF. It consists of a flow chart which *highlights* the following: Ombudsman objectives; key functions; activities; outputs; immediate outcomes; intermediate outcomes; and final outcomes.⁶

These components may be determined by a review of the Office's mandate, supporting structural documents, or by self reflection. It is important that the final outcomes reflect those discussed in the previous section. The Logic model is a graphic, and it is important to keep statements concise in order not to overwhelm the activity. Again, simply developing these statements in the logic model may provide a basis for an evaluative conclusion. The flow chart below is an example of a logic model that may be used by Ombudsmen in developing an RMAF.

⁵ Treasury Board Secretariat, 2001, **Guide for the Development of Results-based Management and Accountability Frameworks** http://www.tbs-sct.gc.ca/eval/pubs/RMAF-CGRR/RMAF_Guide_e.pdf (Accessed February 23, 2007) p34

⁶ ICANN Office of the Ombudsman, 2005, **Results-based Management Accountability Framework**, <http://www.icann.org/ombudsman/documents/rmaf-08feb05.pdf> (accessed January 28, 2007) p7

Office of the Ombudsman

Logic Model

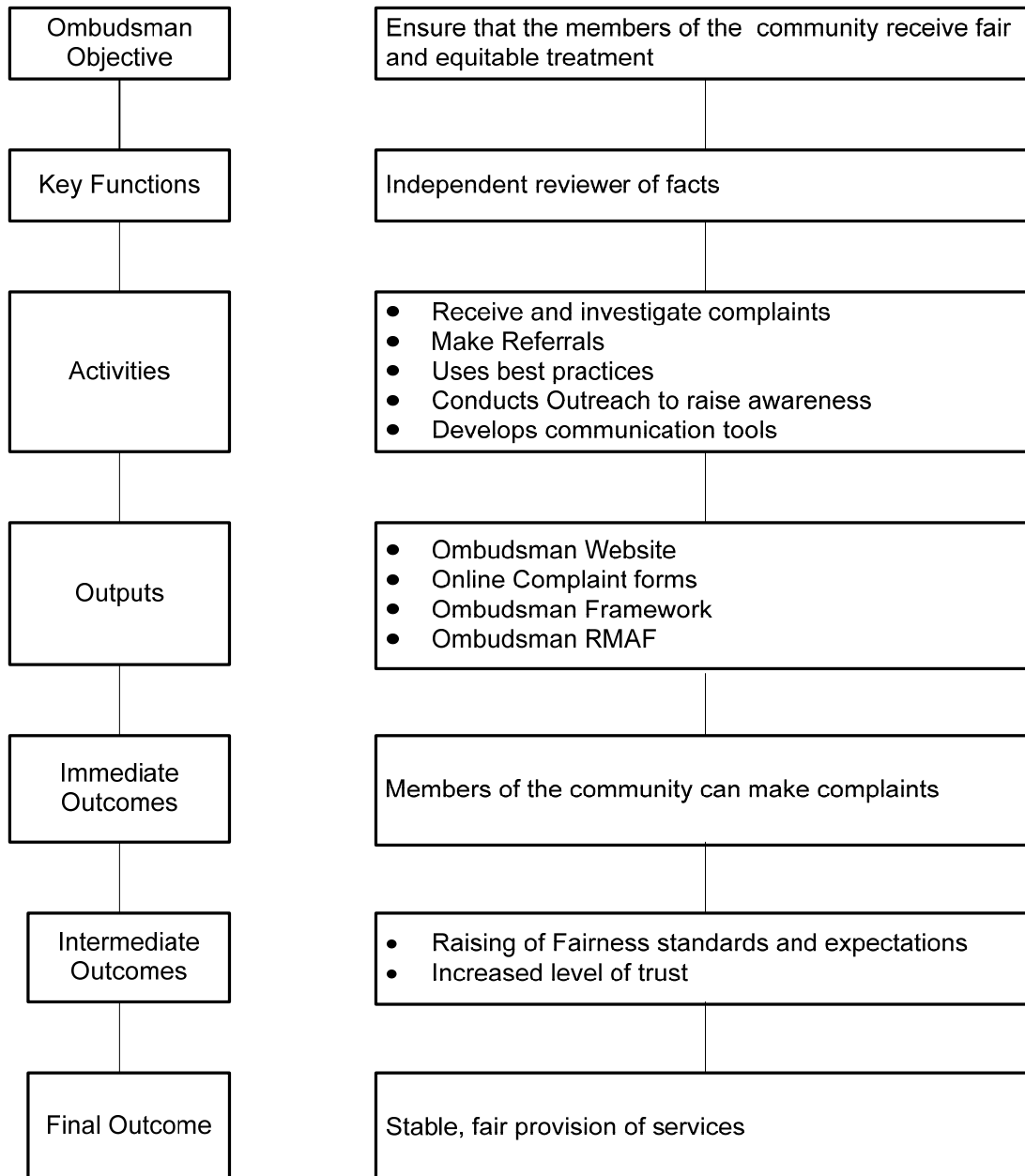


Figure – Sample Ombudsman Logic Model

The Evaluation Strategy

An evaluation strategy identifies a series of questions that can be asked in order to determine if the Office of the Ombudsman has been successful, the types of indicators used to measure success, and data requirements to support the indicators. The evaluation strategy supports the logic model, and like the latter, is a living document; if the logic model changes, so must the evaluation strategy.⁷

The evaluation strategy should highlight any factors which impact the office or the evaluation. These may include issues such as staffing shortages, database issues, or known gaps between client expectation – Ombuds outcome – and satisfaction levels. The evaluation should also consider the availability of data, and data sources relevant to the criteria, and the costs to conduct the evaluations on a one-off or continuing basis.

The Evaluation Questions

As an example, the ICANN Office of the Ombudsman Results-based Management Accountability Framework includes seven broad evaluation questions with 15 performance indicators in four topic areas: relevance; management; program delivery; and cost effectiveness.⁸

⁷ ICANN Office of the Ombudsman, 2005, **Results-based Management Accountability Framework**, <http://www.icann.org/ombudsman/documents/rmaf-08feb05.pdf> (accessed January 28, 2007)p 11

⁸ ICANN Office of the Ombudsman, 2005, **Results-based Management Accountability Framework**, <http://www.icann.org/ombudsman/documents/rmaf-08feb05.pdf> (accessed January 28, 2007) pp13-14

Figure

ICANN Ombudsman Evaluation Questions and Performance Indicators

Relevance	Performance Indicators
Is there an ongoing need for the Office of the Ombudsman?	# of people using Ombudsman services (call centre, website, complaint form etc)
	# and type of complaints
	# and type of resolutions
	# and type of media mentions that focus on the Office of the Ombudsman
	% of complainants/community who agree there is a need for the Ombudsman
Management Is the Office of the Ombudsman resources sufficient to carry out its mandate?	Performance Indicators
	Activities and outputs completed as planned
	Perception that Ombuds has sufficient resources
Program Delivery To what extent has the Ombudsman established effective working relationships?	Performance Indicators
	With Staff, Board, Supporting Agencies, Registries, Registrars, and the ICANN community in general
	Are ICANN staff and Board dealing with identified issues in a timely manner?
	# of cases requiring staff or board intervention, age of dispute to resolution by ICANN
Has there been a change in behaviour on the part of ICANN or a complainant to avoid litigation?	# of cases resolved by Ombudsman which could have gone to litigation % of complainants who would use the Ombudsman again
Cost effectiveness Has the Ombudsman been cost effective in delivering the program?	Performance Indicators
Are there cost effective alternatives?	Savings as a result of bulk airfare purchases, prudent purchasing of equipment, etc
	Cost per file? Productivity
	Actual or potential improvements, efficiencies, or cost savings in ICANN program delivery or administration
	Are there other models of Executive Ombudsman which ICANN could employ?

The nature and complexity of Ombudsman's operations will impact all portions of the evaluation questions and performance criteria. A small internal / organisational Ombuds program with a limited number of clients may well have a very different set of questions and criteria than a classical Ombudsman at a state or national level. These evaluation questions and criteria are included in a chart or graphic, and correlated with: the source of the data to analyze the criteria; the stakeholder who can provide the information of the criteria, and timing of the data with the ongoing, formative or summative evaluations.

Reporting Strategy

The reporting strategy is a vital component to the RMAF. To whom, and when are reports given, and for what purpose? Bearing in mind that evaluation may be used to consider the retention of the incumbent, to readjust budgets or staffing level, or to identify performance or systems strengths or weaknesses, having a reporting strategy is important. As it is a regular and usual Ombudsman function to provide an annual report to the entity it oversees, this becomes a natural vehicle to also report on evaluation initiatives. Formative or mid-term evaluations are normally conducted and reported on in the second to third year of operation, while final or summative evaluations are conducted and reported on in year five.

Fifty Questions for Self Evaluation

Introduction

One facet of the ongoing research has been a review of the literature which helps to develop evaluation criteria. The goal of the review was to determine if there are resources which would enable the Office of the Ombudsman to:

find evaluation criteria;

have logical standards in mind during the evaluation;

And to determine, by preponderance in the literature, which criteria and standards are most likely to be critical in the conduct of Ombudsmanship.

Once the literature review was completed, we could construct an evaluation map for the Office of the Ombudsman with respect to the criteria, standards, and emphasis found.

A second step in the process may be to have a knowledgeable and qualified analyst conduct a review of the findings of the Office of the Ombudsman in this evaluation, and provide fact checking and commentary. This review may be conducted by a peer Ombudsman, an academic, or an outside consultant. The external review adds credibility to the in-house review conducted by the Ombudsman.

Finding the literature

The research has revealed that there exists no documentation specific for these purposes. In fact, The Human Resource Planning Society has indicated that, “Methods for measuring the effectiveness of the Ombudsman office ... do not exist.”⁹

There are small a number of documents which have been identified. The three “seminal” works, which relied on during the course of this evaluation, are:

Standards for the Establishment and Operation of Ombuds Offices, by the American Bar Association (ABA) ¹⁰;

Essential Characteristics of a Classical Ombudsman, published by the United States Ombudsman Association (USOA) ¹¹; and

Creating the Office of the Ombudsman¹², by Rick Russell, a solicitor, Ombuds, and Alternative Dispute Resolution practitioner.

What does the literature reveal?

There are a number of factors which should be discussed prior to the analysis of the criteria, standards, and emphasis found in the three noted documents. First, the USOA document is an iterative document, taking its genesis from a list

⁹ Williams, Randy et al., 2003, **Organisational Ombudsman Program: A Governance and Trust Strategy**, The Human Resource Planning Society p8

¹⁰ American Bar Association, 2004, **Standards for the Establishment and Operation of Ombuds Offices**, <http://www.abanet.org/adminlaw/ombuds/115.pdf> (accessed October 30, 2006)

¹¹ United States Ombudsman Association, 2006, **History of the Public Sector Ombudsman**, http://usoa.non-profitsites.biz/en/About_Us/history.cfm (Accessed October 15, 2006)

¹² Russell, Rick, (date unknown) **Creating the Office of the Ombudsman**, <http://www.agreeinc.com/ombudsman.html> (Accessed January 27, 2007)

developed in the ABA Standards¹³. Gottehrer et al..¹⁴, authors of the USOA document, have relied on the initial ABA Standards in their paper, and have defined and expanded upon the characteristics found in the ABA Standards.

These two documents are primarily focused on Classical or Governmental Ombuds schemes. These are typically Ombudsman appointed by a statutory authority such as a legislature, and whose mandates relate to the provision of governmental administration in a particular jurisdiction.

The Russell paper is written from the viewpoint of an “organisational Ombudsman”. The ABA Standards define this type of Ombuds as one who “ordinarily addresses problems presented by members, employees, or contractors of an entity concerning its actions or policies.”¹⁵

While Russell does concentrate on Organisational Ombudsmanship, his paper is extremely helpful as it well defines and illustrates criteria which can also be applicable for an Executive Ombudsman structure. While Russell does not comment on the principles of confidentiality and impartiality, he does explore principles of natural justice in some depth.

¹³ American Bar Association, 2004, **Standards for the Establishment and Operation of Ombuds Offices**, <http://www.abanet.org/adminlaw/ombuds/115.pdf> (accessed October 30, 2006) Footnote 12

¹⁴ Gottehrer was Secretary of the USOA

¹⁵ American Bar Association, 2004, **Standards for the Establishment and Operation of Ombuds Offices**, <http://www.abanet.org/adminlaw/ombuds/115.pdf> (accessed October 30, 2006) p20

The Fifty Questions

Alignment

Is the Office of the Ombudsman aligned with the operations, goals, principles of the organisation it serves? i.e. if it is a high tech organisation, do you use leading edge methodologies? Is the composition of the Office of the Ombudsman representative of the potential users? Does the Office of the Ombudsman reflect the goals of the organisation: i.e. does your work increase academic achievement; patient care; employee retention etc?

Autonomy - Arm's length - Independent

Is the Office of the Ombudsman situated at "arm's length" from the organisation it serves?

Due process - Natural Justice Principles applied

Does your Office apply the rules of natural justice, and have procedures in place to ensure that you follow the principles of due process?

Sufficient Resources

Are the economic, staffing, support and peer resources given to you enough to allow you to discharge your mandate?

Access to Information, documents, staff

Does your mandate enable to access resources in the organisation?

Community buy-in

Is there evidence that there is "buy-in" for the continuation of your Office?

Clear mandate

Does the charter document, bylaw, statute, or directive establishing your Office make clear what your mandate and functions are?

Recourse - Moral Suasion - Public Criticism

Does your Office have the ability to use the power of moral suasion to resolve issues? Does that include the power of public criticism through annual or special reports?

Accessibility (promotion - availability to the community)

Is your Office available to the community you wish to serve, and do you have appropriate tools to promote the Office's services to the community?

Power of Own Motion

Do you have the ability to begin an Ombudsman process where you believe that there is an issue of unfairness, and where there may not have been a visitor or complainant?

Annual Report

Are you required to produce an annual report? Does it tell the story of what you really do for a living?

Established Terms of Reference (TOR)

Is there clarity in your contract, bylaws, mandate, institutional policies and procedures to define your terms of reference? Can you identify when you are operating outside of your mandate?

Qualified - Knowledgeable Incumbent

Does the Ombudsman have the knowledge, qualifications, and "street credibility" to get the job done?

Advisory group

Is there a legislative committee, board governance group, stakeholder committee, that acts at an arm's length from the Ombudsman to provide group – not individual- advice on Ombudsman operations?

Active Public Relations Campaign - community education

Does your outreach program meet the needs of your community?

Structural Autonomy and Accountability

Are there clear lines concerning your independent ability to do such things as hiring staff, purchasing needed equipment, selecting training, travel etc?

Filing system

Do you have a separate and secure filing system?

Database

Do you keep appropriate statistical data?

Balanced time management

Does your role have multiple activities: meeting with visitors, investigations, administration, outreach etc, and is there balance in the time you can devote to each? e.g., does the administrative function of running the office outweigh your ability to do outreach or intakes?

Reporting relationship with advisory and budget group

Is there a linkage between the organisation, especially in terms of budget setting, approval, and updating, and your office?

Review of start up policy – TOR

At some time after start up, have you reviewed your terms of reference to make sure that they are in synch with work you actually do, the work you are seen to do, and the work that the community wants from you? Is there conflict, and is there a need to revise the terms of reference?

Independence

Are you an independent officer of your organisation? How can you demonstrate that? Are you seen to be independent?

Impartiality and fairness

How does your Office define fairness for its operations? Can you apply these principles and be seen to be impartial?

Credibility of the review process

While decisions and recommendations of the Ombudsman are normally not subject to appeal or review, it is a testament to the whole body of the Ombudsman's work if the review process undertaken would have credibility in the eyes of a third-party. Is your review process credible?

Confidentiality

Does your Office make public pronouncements on confidentiality? Are you seen to be a confidential resource? Does your Office or organisation have specified policies on confidentiality?

Independence - established by higher jurisdiction

Is your Office established by a bylaw, policy, or statute through the organisations higher jurisdiction?

Independence - separate from the organisation it reviews

Is your Office seen to be separate and independent?

Independence - appointed by super majority

Is the Ombudsman appointed (or removed) by a super-majority of the organisations board, senate, or legislature?

Independence - long fixed term - reappointment possible

Is your appointment of a fixed term, usually exceeding the length of time that the super-majority is in office?

Independence - for cause removal by supermajority

Does the organisation have the ability to remove the Ombudsman for cause, but only a supermajority vote of the body that appointed the Ombudsman?

Independence - high fixed salary

Is the salary of the Ombudsman at a fixed level, and relevance of a senior member of the organisation?

Independence - appropriate budget - accountability of spending

Is your budget allocation sufficient to meet the requirements of the work? Is the Office of the Ombudsman accountable for its spending? Does the Office receive sufficient reporting from the budget office?

Independence - sole authority to hire staff

Does the Office have the sole authority to select its staff members?

Independence - someone can always exercise the Ombudsman role

If the Ombudsman is unable to act in the role due to vacation, sick leave, etc, is some other person able to receive and act on complaints, or to make recommendations?

Independence - decisions not reviewable

Are decisions or recommendations made by the Ombudsman reviewable by some other entity?

Impartiality and fairness - Qualifications

Is the incumbent qualified for the post of Ombudsman, and do they have requisite knowledge of the particular organisation?

Impartiality and fairness - no conflict of interest in activities

Is the Ombudsman prevented from undertaking any activity which may tend to cause a real or perceived conflict of interest?

Impartiality and Fairness - direct access to Ombuds no fee required

Are members of the community who wish to make complaints required to obtain any permission from another agent, or is any fee be charged to lodge a complaint?

Impartiality and fairness - power of recommendations and public criticism

Does your Office have authority in its terms of reference to make public its recommendations or criticism of the organisation?

Impartiality and fairness - required to consult on adverse findings

If your Office makes findings or recommendations which are critical of individuals or structures, are you required to consult with the affected parties prior to reporting?

Impartiality and fairness Ombuds is an advocate for fairness, not the parties

Is your Office seen to be, or does your Office have policies or make pronouncements, as being an advocate for the fairness of a process, as opposed to an advocate for one of the parties in a dispute?

Credible Review Broad jurisdiction

Is the jurisdiction of your Office defined, and do you act in a manner not to limit the jurisdiction of issues which may be handled by your Office?

Credible review - no parties exempt from complaining

Is your mandate established such that your jurisdiction applies equitably to all parties? Does your Office accept third-party complaints, or complaints from persons not affected by the subject matter of the complaint?

Credible review - organisation not permitted to impede

In conducting Ombudsmanship, does the organisation have the authority, or be seen

to have the ability to require the Ombudsman to take direction from the organisation?

Credible review - Ombuds cannot make binding orders

Is the Ombudsman in properly positioned where he may make recommendations, but not binding orders?

Confidentiality - Ombudsman has power to decide level of information to be disclosed

Is the Ombudsman able to determine what information, personal identification etc, is required in handling or a reporting on a complaint?

Confidentiality - Ombudsman will resist testifying

Is the Office either protected by statute from providing evidence in court based on the Ombudsman's work, or if not, is it the Office's public policy to resist testifying?

Broad range of enquiry available

Does the Office have the capacity to determine what form of enquiry it will use, and can it determine if events are related to individual circumstances or are systemic in nature?

Discretionary power to refuse complaints and to publicize

Does the Ombudsman have the ability to refuse to act on issues? May the Ombudsman refuse to publicize or report on issues if he feels there is an underlying reason, such as public interest not to?

Identify complaint patterns and trends

Does your Office look at the database, and does it report on trends found, even if these are not jurisdictional, but may be of interest to the organisation?

Using International Standards

The International Organisation for Standardization (ISO) is a network of the national standards institutes of 157 countries. The ISO develops international technical standards for industry, businesses, and governmental bodies. These international standards are adopted the national standards bodies of the member states (i.e. American Standards Association {ASA} or Standards Australia) to provide for the continuity of standards in manufacturing etc on a local level.¹⁶

The ISO has developed two international standards which are relevant to Ombudsman operations: ISO 10002 Quality management – Customer satisfaction – Guidelines for complaints handling in organisations; and ISO 10003 Quality management – Customer satisfaction – Guidelines for dispute resolution external to organisations.¹⁷

ISO 10002

ISO 10002 Quality management – Customer satisfaction – Guidelines for complaints handling in organisations was promulgated as an international standard in July 2004. This standard provides guidance for the design and implementation of an effective and efficient complains-handling process for all

¹⁶ International Organisation for Standardization, **Overview of the ISO System**, <http://www.iso.org/iso/en/aboutiso/introduction/index.html#two> (Accessed March 25, 2007)

¹⁷ Both standards are available for purchase through the ISO website: <http://www.iso.org/iso/en/CatalogueListPage.CatalogueList>

types of commercial or non-commercial activities, including those related to electronic commerce.¹⁸

The standard has a number of key areas:

- provide a complainant with access to an open and responsive complaints-handling process;
- enhance the ability of the organisation to resolve complaints in a consistent, systematic and responsive manner, to the satisfaction of the complainant and the organisation,
- enhance the ability of an organisation to identify trends and eliminate causes of complaints, and improve the organisation's operations,
- help an organisation create a customer-focused approach to resolving complaints, and encourage personnel to improve their skills in working with customers, and
- provide a basis for continual review and analysis of the complaints-handling process, the resolution of complaints, and process improvements made.¹⁹

The standard provides the first attempt at developing comprehensive, yet generic standards, on a bullet form, or checklist basis. The standards are meant to be

¹⁸ International Organisation for Standardization, 2004, **Quality management — Customer satisfaction — Guidelines for complaints handling in organisations, Standard ISO 10002**, Geneva p vi

¹⁹ International Organisation for Standardization, 2004, **Quality management — Customer satisfaction — Guidelines for complaints handling in organisations, Standard ISO 10002**, Geneva p vi

applied to any organisation which takes complaints from the public, from the corner grocer, to international organisations. Thus the generic nature of the standard may, at times, appear to be somewhat imprecise and vague. For example, in consideration of an evaluation process, standard 8.3 simply states, “There should be regular action taken to determine the levels of satisfaction if complainants with the complaint handling process. This may take the form of random surveys of complainants and other techniques.”²⁰ This standard contains a number of helpful appendices, with model definitions, flowcharts, and complaint forms.

ISO 10002 is essentially a road map for the handling of complaints internal to an organisation. As such, it has usefulness for both organisational and executive Ombudsman programs.

ISO 10003

ISO 10003 Quality management – Customer satisfaction – Guidelines for dispute resolution external to organisations differs from the preceding standard on two levels. First, at the time of writing, it was a draft standard, still in the process of being agreed to, and adopted by the member standards bodies. ISO 10002 is an adopted standard. Secondly, ISO 10003 provides guidance for the handling of

²⁰ International Organisation for Standardization, 2004, **Quality management — Customer satisfaction — Guidelines for complaints handling in organisations, Standard ISO 10002**, Geneva p 8

complaints when they are not resolved internally. This standard will have the following goals when implemented:

- provide flexible dispute resolution that, in comparison with court-based processes, can be less expensive, easier and quicker, especially in disputes across borders;
- help to enhance customer satisfaction and loyalty;
- provide a benchmark against which individuals and organisations can evaluate claims by organisations and providers that they operate in an effective, efficient and fair manner;
- help to inform potential users of dispute resolution about the conditions of access, cost, and the legal consequences;
- enhance the ability of an organisation to identify and eliminate causes of disputes;
- improve the way complaints and disputes are handled in the organisation;
- provide additional information that can contribute to improvement of the organisation's processes and products;
- improve the organisation's reputation or avoid damage to it;
- improve domestic and international competitiveness; and
- provide confidence of fair and consistent treatment of disputes throughout the global marketplace.²¹

²¹ International Organisation for Standardization, 2006, **Quality management — Customer satisfaction — Guidelines for dispute resolution external to organisations, Draft Standard ISO 10003**, Geneva p vi-vii

ISO 10003 is constructed in a manner similar to ISO 10002, and it is also generic in nature. Interestingly, the standard provides an Appendix on “Guidance on fairness”. This appendix provides information on how to achieve fairness or natural justice, but these concepts are not defined.

ISO 10003 was published in draft form in July 2006. Due to the nature of the standards, it would primarily apply to classical or executive Ombudsman programs.

ISO 10002 and 10003 applied to the Office of the Ombudsman

These ISO standards may be used by individual Ombudsman practitioners to help either evaluate or benchmark operations and activities. The evaluation or benchmarking process may take place through one of three mechanisms: self evaluation; peer evaluation; or evaluation by an ISO approved standards evaluator. Each form of standards comparison has its advantages and disadvantages.

Evaluation method	Advantages	Disadvantages
Self Evaluation	Low cost; may be done over time, or at a single window of time; practitioner is knowledgeable about the operation – evaluation may be done quickly; protects confidentiality	May be seen as insular or lacking in independent credibility; may not be able to use comparators; practitioners lack of evaluation experience
Peer Evaluation	Cost effective; outsider review promotes independent results; promotes collegial relationships; reciprocal evaluations by participants encourages development of best practices	Finding a colleague with a similar Ombudsman operation; peers may lack or have disparate evaluation skills; may be seen as a quid pro quo arrangement
ISO approved evaluator	Likely completed quickly, and with professional reporting; credibility of third-party review; “bragging rights” over meeting ISO standards	May have contractor costs;

Finding the ISO Standards and ISO Certified Evaluators

The two ISO standards noted above (10002 and 10003) may be found on the ISO website at the found at the following web addresses:

<http://www.iso.org/iso/en/CatalogueDetailPage.CatalogueDetail?CSNUMBER=35539&ICS1=3&ICS2=120&ICS3=10>

and

<http://www.iso.org/iso/en/CatalogueDetailPage.CatalogueDetail?CSNUMBER=38449&scopelist=PROGRAMME>

The standards are available for purchase at a cost of CHF 65-100 Swiss Francs. There is a strict copyright and use policy attached to the purchase of the standards, which restricts copying, printing, or file sharing. ISO evaluators may be found by verifying the roster found on the appropriate national standards institute website, or by contacting the appropriate body.

Statistical Comparisons

Figures often beguile me, particularly when I have the arranging of them myself; in which case the remark attributed to Disraeli would often apply with justice and force: "There are three kinds of lies: lies, damned lies and statistics."²²

It is evident that an Ombudsman practitioner may be able to benchmark activity and develop an evaluation of productivity based on a statistical comparison of activities, budgets, and resources between one office and another. It is important to bear in mind that these comparisons are based on a snapshot of activity. It is neither a predictor of future comparisons, nor of intake volumes. These will, of course, be dictated by issues handled by the agency, and by community response.

In conducting a statistical comparison Ombudsman should keep some general guidelines in mind:

- ✓ No two Ombudsmen operations are exactly the same. Qualifiers such as the method of gathering and maintaining statistics; historic age of the operation; reputation of the incumbent; outreach activities; legal frameworks; and frequency of reporting all impact on the veracity of the comparisons.

²² Twain, Mark, **Autobiography of Mark Twain**, quoted at: <http://www.twainquotes.com/Statistics.html> (Accessed October 1, 2006)

- ✓ No two Ombudsman complaints are exactly the same. A review and report on an unfair governmental system may take years of investigation and reporting, and the attention of multiple staff members. A referral to an outside source may be repeated often, and at the front line of the organisation. Both of these file activities would have a similar statistical weighting – a file closed by the Ombudsman. A cautionary note is for the Ombudsman to attempt to have the most rational comparisons possible.
- ✓ Ombudsmen should compare their operations with similar operations. These would include operations of similar classification (classical to classical; organisational to organisational); size (of the client audience and resources) and mandate (university to university, bank to bank).
- ✓ Complaint volumes may be tied to outreach activities and topical events. The presence or absence of which may increase or reduce activity.
- ✓ Comparisons can be made on a number of lines:²³
 - Raw numbers of staff, complaints, and resources
 - Files per staff member
 - Cost per file
 - Cost per file per staff member

²³ For an example see www.icannombudsman.org/

Surveying Clients

Client surveys can be helpful in the overall evaluation of an Ombudsman's operations and activities. Clients, after all, are the reason that entities create Ombudsman functions, and their opinions and feedback are therefore important to consider. 'Clients' is a generic term, which indicates the group of persons who access an Ombudsman's Office seeking to redress unfairness. This group will vary depending on the type of Ombudsman operation. Classical Ombudsmen will deal with citizens as whole; executive Ombudsmen will deal with members of a particular community who access services from some sort of entity; and organisational Ombudsmen will deal with clients who are members of the internal population of an entity, such as employees, students, patients, etc.

The manner, frequency, depth, and amount of surveying that an Ombudsman will wish to do with her clients are very contextual. It will vary with the type of Ombudsman, the geographic proximity, the willingness of the client group to participate, resources, and perceptions of risk of attribution.

Surveys may be conducted in a number of ways. The method engaging the client group to solicit feedback is limited only by the imagination and perseverance of the Ombudsman practitioner. Clients may be solicited to participate in online surveys²⁴ by email; clients may be given calling cards with an online address; contracts can be established with research firms for telephone sampling; clients

²⁴ As an example, see <http://www.surveymonkey.com/>

may be given mail-in forms following office visits; the whole community (including clients and non clients) may be surveyed, survey invitations or forms may be given with receipts, pay stubs, tax bills, annual reviews, or the sale of products.

A key behind successful surveying is for the practitioner to have a good understanding of the questions, “Why survey? What information or feedback do we hope to gain? How will this information add to an overall understanding of what the Office does?” In essence, the Ombudsman has to have some clear objective in mind in order to be able to craft relevant, reasonable, and understandable questions.²⁵ In crafting the survey, the Ombudsman must also bear in mind the language of use, general literacy level, cultural biases which may influence the responses from clients. Generally, if the survey is simple and user friendly, there will be a greater likelihood of obtaining accurate and meaningful results.

In formulating survey questions, Ombudsmen are urged to reflect on the evaluation question developed as part of the Results-based Management Accountability Framework (RMAF). There should be a relationship between the evaluation questions developed in the RMAF and the survey questions posed to clients. “If the survey questions don’t assist in responding to the evaluation questions, then why are you asking the survey questions?”

²⁵ An example of a client survey may be found at <http://www.icann.org/ombudsman/documents/client-survey-aug06.pdf>

Without limiting the types of questions an Ombudsman may wish to address, and while bearing in mind that the context, goals, evaluation expertise and resources available for individual practitioners, Ombudsmen may wish to survey clients on the following types of questions or themes:

- *Manner of accessing the Ombudsman* – this will help to determine your key points of contact, and areas where outreach may assist in raising awareness.
 - How did the client learn of the Ombudsman?
 - Personal referral
 - Previous visit
 - Website
 - Staff Referral
 - Media article
 - Google or Internet search
 - Word of mouth
 - Government representative
 - Others?

- *Ease of finding the Ombudsman* – this question helps to determine if your contact information is being accessed in the right places
 - Was it easy to find out how to contact the Ombudsman?

- *How long ago did the contact with the Office of the Ombudsman take place?* – Provides some context for the currency of issues?
- *Language use* – If your Office offers services in more than one language you may want to understand the languages used, qualitative questions about the level and satisfaction of service delivered or documents available. You may also wish to design questions to consider time delays due to translation if a second language (or more) is used.
- *Jurisdiction* – surveying is an important way to validate statistics found in a case management system (if one is used). You may formulate questions to determine why clients contacted your office, and to design the question so that you can determine if the issues were inside of your jurisdiction or not.
- *Client satisfaction and expectations* – Ombudsmen may design qualitative questions which measure such components of Ombudsman operations as: confidentiality; timeliness; professional manner; respect; explaining the Ombudsman's jurisdiction; in providing an appropriate referral; in updating or corresponding with client; and overall satisfaction. Baseline may be established using the correspondents' expectations of service (the scale ranged from: not all; to expectations met; to better than I expected), or through numerical scaling (i.e. on a scale of 1 to 10 please tell us...). Correspondents should also be permitted to reply "N/A" or not applicable.

- *Client's Option* – there are two key questions that can be asked in surveys to help an Ombudsman understand impact:
 - If you did not have the option to correspond with the Ombudsman about your issue, where would you have gone to get help? and:
 - After the Ombudsman corresponded with you at the end of his work, what did you do?

For example, clients may have indicated in responding to the first question that they would have filed a lawsuit if the Ombudsman was not available. If they did not indicate in responding to the second question that they had filed a law suit, then it may be fair to say that the presence of the Ombudsman helps to reduce litigation.

- *Results* – questions designed to help understand, from the clients point of view, what happened as a result of interacting with the Ombudsman:
 - What was the result of your communication with the Ombudsman?
Possible answers may include: Other (narrative open responses); Ombudsman took action and the issue was resolved; the Ombudsman declined to investigate; I was referred to someone else; the complaint was investigated; I received self-help information; and, I withdrew my complaint.
 - If you received a referral or self-help information from the Ombudsman, did it assist you in resolving the matter?

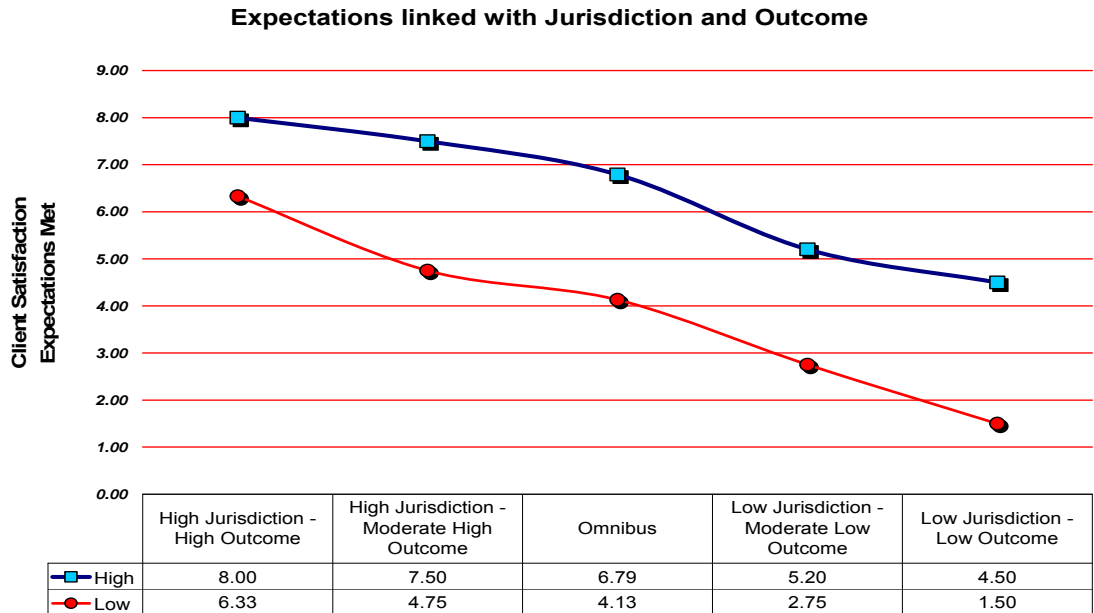
The results of this question may be correlated with the answers from the previous one indicating “I was referred to someone else”.

This question helps to determine whether the referrals provided are helpful.

- *Tools and Documentation* – the survey may provide insight as to what documentation (i.e. Annual Report) or what communication tools (i.e. Website, blog, brochures) the clients accessed, and what opinions they have on these.
- *Recommendation* – this question is a barometer of overall satisfaction. Obviously, if clients indicate that they would recommend others to come to the Office of the Ombudsman, it is a sign of client satisfaction.
 - Would you recommend the Office of the Ombudsman to someone else who had an (your agency, entity, company etc) related issue to resolve?
- *Demographics* – consistent with law and policy, and in consideration of the nature of the Office, the Ombudsman may wish to gather information about the demographic make up of clients.
- *Open Ended Narrative* – Ombudsmen may wish to provide the opportunity for clients to express comments which may not otherwise have been solicited in the survey.

- Is there anything else you would like to add to assist our evaluation of the Office of the Ombudsman?

○



This chart illustrates client satisfaction-based on meeting expectations as determined in a client survey. The High Jurisdiction – High Outcome (in jurisdiction act, decision, or inaction which was resolved) satisfaction range is higher and tighter than the Low Jurisdiction – Low Outcome (not a jurisdictional issue – complaint declined).



Figure Satisfaction Gap

Based on survey results and the figure “Satisfaction-based on Jurisdiction and Outcome”, this figure demonstrates a ‘satisfaction gap’ that Ombudsman should be aware of. It appears that there is a direct relationship between the jurisdiction – outcome of a complaint, and a client’s satisfaction level. The satisfaction gap is the divergence between the client’s actual and potential levels of satisfaction at the end of an Ombudsman process. Research would indicate that high jurisdiction – high outcome complaints would create higher levels of satisfaction than low jurisdiction – low outcome complaints. Therefore, when surveying client satisfaction Ombudsmen should be aware a preponderance of low jurisdiction complaints or contacts likely decreases overall satisfaction levels.²⁶

²⁶ ICANN Office of the Ombudsman, 2007, **2007 Annual Report**

So, the survey is complete, now what?

An important factor in planning a survey as an evaluation tool is to consider the readability and usability of the results. If the results of the survey only create “So what?” responses then it might not have been the right type of survey, or the right questions to have posed. Using online tools such as Survey Monkey²⁷ is helpful, as they have online tabulation functions, which calculate results.

It may be a good idea to have the survey results verified by an outside party. This will, as with all other evaluation tools verified by a third-party, add credibility to the results. This can be done in a cost effective manner by Ombudsmen peers reviewing the work of others, and reciprocating in kind.

²⁷ see <http://www.surveymonkey.com/>

Annual Reports, Case Studies, Out-reporting and Storytelling

An important consideration in the evaluation process is a communications or reporting strategy. The RMAF should include the genesis of a reporting strategy. The reporting or storytelling about evaluations will be dependent on a number of factors. As always, a primary factor is the 'Why evaluate?' question.

If the evaluation is based on the ongoing analysis of evaluation questions and criteria developed in the RMAF, then it may be appropriate to include information on these ongoing assessments in the Ombudsman's Annual Report. The following is an excerpt from an annual report which does this reporting:

The Office of the Ombudsman Results-based Management Accountability Framework requires that I report on five performance indicators concerning four evaluation questions, and report to the Board on these on an annual basis.

1. Relevance – Is there an ongoing need for the Office of the Ombudsman?

The trend analysis for my Office is best documented through the various charts and graphs within the body of this report.

There are a number of indicators for the relevance of my Office. First is the volume of complaints received, and the variety of issues brought to my attention. This indicates to me that the community continues to see my Office as a credible resource in dealing with issues of dispute.

Secondly, the variety of sources of complaints: individual domain name holders; applicants for administrative benefits provided by ICANN; CCTLD managers; organisations; and board members, indicates to me that my Office is able to respond to a wide range of fairness based issues, and this wide acceptance of my Office is de facto recognition of its relevance.

Media analysis continues to evidence a positive reception of the Office in the community.

2. Are resources sufficient for the Office of the Ombudsman to carry out its mandate?

During the year, the Adjunct Ombudsman, Mr. Herb Wayne, assists my Office when I am either on vacation or sick leave by receiving and responding to correspondence from the community. Mr. Wayne has also attended two ICANN meetings, as a volunteer, to assist me in the operation of a physical office location.

In FY 06-07 the budget resources provided by ICANN have been sufficient to meet the operational, administrative and outreach components of my mandate.

The One World Trust Report on ICANN Accountability and Transparency makes the following commentary on Ombudsman Resources:

The Ombudsman plays an important role within ICANN as an informal alternative dispute resolution mechanism. Since its formation, it has reduced the number of complaints handled through the formal complaint channels of the Reconsideration Committee. As the Ombudsman's office continues to reach out to the community and raises awareness of the function within the ICANN community, there is the distinct possibility that the number of complaints it has to handle will increase. The office's user group is the entire Internet community, yet it is currently staffed by a single full time Ombudsman and an adjunct Ombudsman that provides holiday cover. To ensure the continued effectiveness of the office, ICANN should continue to support the Ombudsman through the adjunct Ombudsman and also consider recruiting an additional full time member staff to provide administrative support to the office.

Recommendation 4.3: ICANN should consider strengthening the capacity of the Ombudsman's office by recruiting full time administrative support for the Ombudsman.

There will not be an increase in the Ombudsman staff complement in FY 07-08. In fact, the Board of Directors has instructed me that as of June 30, 2007, that I am to operate my Office without the assistance of the Adjunct Ombudsman. Herb, thank you for all of your good work.

3. Cost effectiveness – Actual or potential improvements, efficiencies, or cost savings in ICANN program delivery or administration? Are there other models of Executive Ombudsmanship which ICANN could employ?

The Office of the Ombudsman has acted on complaints, made referrals, provided self-help information, and has made recommendations as part of the alternative dispute resolution (ADR) processes. These steps, in the long run, provide for a more efficient overall operation by having a professional ADR service which allows the staff, supporting organisations and the Board to focus on their core work, rather than dispute resolution. The numbers of requests for reconsideration has dropped. The recommendations made by the Office of the Ombudsman provide for the lowering of conflict temperature, and the improvement of services or processes.

The flexibility of the Office to respond to issues, language, culture, and a range of conflict styles, combined with a wide spectrum view of conflict resolution means that the Office offers responsive, timely, and relevant solutions, at an early time frame, and reduces antagonistic relationships between the parties. I cannot imagine a more efficient manner of delivering this service to the organisation and the community.²⁸

Summaries of formative and summative evaluations may also be material for annual reports. These are also examples of out reporting, along with clients surveys, etc, which may logically be placed in the public or community view on an Ombudsman web page. Other types of evaluations, such as ones conducted to determine retention of the incumbent, may be considered to be private in nature, and only circulated to those persons making decisions about retention.

²⁸ ICANN Office of the Ombudsman, 2007, **2007 Annual Report**

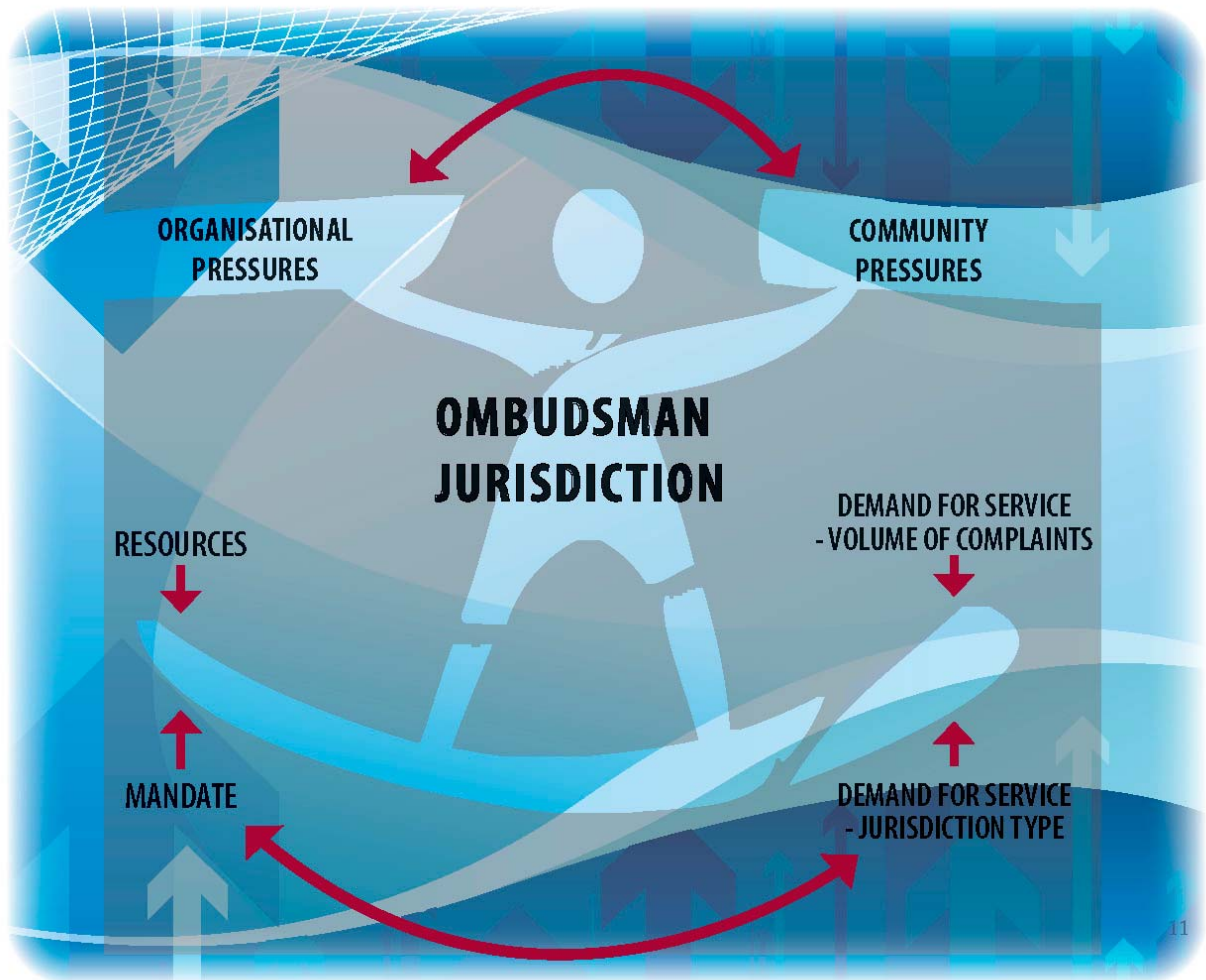


Figure Factors Impacting Ombudsman Performance

This Figure shows pressures which impact on Ombudsman operations. The figure centers on the Ombudsman jurisdiction, which is established by statute, appointment, policy, or corporate or municipal bylaw. Community pressures which may impact the Ombudsman's operations include the volume of complaints, or the demands for service, made upon the Ombudsman, and the complaints' jurisdiction. Likewise, the Ombudsman is impacted by the organisation which determines the Ombudsman's mandate, and provides the

resources to fulfill that mandate. In a balanced Ombudsman system, the resources allocated will be sufficient to meet the demands for service, and the Ombudsman's mandate will clearly determine the scope of issues in the Ombudsman's jurisdiction. The balance can be shifted by one of the factors coming unbalanced from the rest; i.e. a surge in demands for service without increased resources, or consistent demands for service in an area where the Ombudsman does not have jurisdiction.²⁹

²⁹ ICANN Office of the Ombudsman, 2007, **2007 Annual Report**

Conclusion

The Ombudsman represents the best intentions of governments, corporations, or agencies to deal with conflict. The Ombudsman institution allows individuals to use an independent and confidential officer to resolve complaints in a non-adversarial environment, without fee. There are several types of Ombudsmen, with peculiarities relating to their jurisdiction, mandate, and powers.

Ombudsmen have done a magnificent job in demonstrating value with the resolution of individual and systemic complaints; subsequent improvements to government, corporate, or agency operations; and economic savings by mitigating litigation costs. “Likewise, the ombudsman role is notably strengthened by the systemic assessment of its effectiveness and services through a program of rigorous evaluation.”³⁰ Using a selection of evaluation tools Ombudsmen may develop individual evaluation frameworks which will strengthen their capacity to fulfill their roles.

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